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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 469

TEXAS AND NEW ORLEANS RAILROAD COMPANY ET AL., PETITIONERS,

vs.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 30, 1929

CERTIORARI GRANTED DECEMBER 9, 1929

(34,600)

TRANSCRIPT OF RECORD.

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 5406

TEXAS AND NEW ORLEANS RAILROAD COMPANY, ET AL.,

Appellants,

vs.

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, ETC., ET AL.,

Appellees.

Appeal from the District Court of the United States for the Southern District of Texas.

(ORIGINAL RECORD FILED AUGUST 2, 1926.)

U. S. CIRCUIT COURT OF APPEALS
FILED
OCT 26 1926
Oakley J. Rodd
CLERK

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 13, 1930

PRAECIPE FOR TRANSCRIPT.

Filed July 13, 1928.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION.

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA, ET AL.,

versus In Equity, No. 314.

TEXAS AND NEW ORLEANS RAILROAD COMPANY, ET AL.

To the Clerk of the District Court of the United States for the Southern District of Texas, Houston Division:

You will please duly prepare and certify forthwith, or as soon as may be, a transcript for appeal of the record in the above entitled and numbered cause, incorporating into the transcript the following portions of the record, which include all possibly deemed material for the review, to-wit:

1. Index.

2. Praecipe.

3. Caption.

4. Original Bill of Complaint with exhibits annexed thereto and order of Court thereon.

5. Amended bill of complaint and any amendments or supplements thereto in order of filing.

6. Intervention of Campbell, Hudson, Stotzer and Moulin.

7. Amended intervention of Campbell, Hudson, Stotzer and Moulin.

8. Rule to show cause on application for temporary injunction.

9. Opinion of Court on application for temporary injunction.

10. Order granting temporary injunction filed August 3, 1927.

11. Amended motion of Texas and New Orleans Railroad Company to dismiss and strike out and amendments and supplements thereto in order of filing.

12. Order overruling same, filed April 30, 1928.

13. Original answer of Texas and New Orleans Railroad Company, et al., filed August 13, 1927.

14. Amended answer of Texas and New Orleans Railroad Company to amended Bill of Complaint and any amendments and supplements to said answer in order of filing.

2 15. Information alleging contempt of Court, exhibits annexed thereto annexed motion and order of Court thereon.

16. Rule to show cause on said Information.

17. Motion to strike out information and certain parts thereof Texas and New Orleans Railroad Company, H. M. Lull, et al.

18. Answer of Respondents, Texas and New Orleans Railroad Company, H. M. Lull, et al., to rule to show cause and any amendments or supplements thereto, in order of filing.

19. Answer in form of affidavit of Harper with respect to authorization filed by Texas and New Orleans Railroad Company, et al., with exhibits or schedules attached thereto, in order of filing.

20. Answer of Texas and New Orleans Railroad Company to said affidavit of Harper with any amendments or supplements thereto in order of filing.

21. Order of Court overruling motion to strike information and certain parts thereof, with exception thereto.

22. Order finding defendants guilty of contempt, filed January 27, 1928.

23. Opinion of Court thereon.

24. Order discharging W. R. Mann from rule.

25. Decree or order finding H. M. Lull, et al., guilty of contempt, filed February 11, 1928.

26. Acceptance of terms of said order, filed by respondents.

27. Motion of Texas and New Orleans Railroad Company, et al., to dissolve temporary injunction, to dissolve contempt order or decree and in the alternative to modify the same.

28. Opinion of Court on said Motion.

29. Order overruling said motion and exception thereto.

30. Order of Court dismissing individual defendants except as to order in alleged contempt.

31. Opinion of Court on final hearing.

32. Final Decree and exception thereto.

33. Stipulation as to motions for leave to file all pleadings of all parties.

34. Notice to solicitors for complainants of lodgment with the Clerk of statement of the evidence and of hearing for settlement and approval of same with acceptance of service indorsed thereon.

35. Order of Court resetting time for hearing, settlement and approval of statement of evidence.

36. Statement of evidence under Equity Rule 75 as approved and made part of the record.

3 37. Respondents' petition for allowance of appeal.

38. Order allowing appeal and fixing amount of bond on appeal.

39. Bond on appeal with approval thereof.

40. Respondents' assignment of errors.

41. Respondents' prayer for reversal.

42. Citation on appeal with acceptance of service indorsed thereon.

43. The usual cost bills and certificates.

Respectfully,

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
G. B. GARWOOD,
Solicitors for Respondents.

We, the undersigned, solicitors for the complainants in the above cause, hereby acknowledge receipt of a duplicate copy of above praecipe for transcript of the record this 13th day of July, A. D. 1928.

FULBRIGHT, CROOKER & FREEMAN,
Solicitors for Complainants.

Indorsements: Filed July 13, 1928.

4 CAPTION.

(Title Omitted.)

BE IT REMEMBERED, That in the above entitled and numbered cause, lately pending in said Court at Houston, and in which a Final Decree was rendered at the regular February Term, 1928, to-wit, on April 19, 1928, Hon. J. C. Hutcheson, Jr., Judge presiding, the following proceedings were had and taken in said Court, to-wit:

5 BILL OF COMPLAINT AND ORDER THEREON.

Filed July 25, 1927.

In the District Court of the United States for the Southern District of Texas, Houston Division.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, and H. W. Harper, General Chairman of the System, Board of Adjustment of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, individually, and as the actual and legally designated and elected representatives of the railway clerks in the employ of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana, except General Office Employees, et al., Complainants,

vs. Equity, No. 314.

Texas and New Orleans Railroad Company, A. D. McDonald, H. M. Lull, G. S. Waid, R. C. Watkins, J. G. Torian, F. H. Bednark, J. A. Pryor, C. E. Armstrong, P. C. Gebhart, F. C. Ehlinger, J. C. McDaniels, C. W. Derrington and the Division Superintendents, Assistant Division Superintendents, train masters, yard masters, special agents and other officers, agents and employees of said Texas & New Orleans Railroad Company exercising directory and supervisory powers over the railway clerks of said Texas & New Orleans Railroad Company in the States of Texas and Louisiana and other employees of said railroad company, Defendants.

To the Honorable J. C. Hutcheson, Jr., Judge of said Court:

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, a voluntary association, and H. W. Harper, a resident of Bexar County, Texas, General Chairman of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, individually and as the actual and legally designated and elected representatives of the railway clerks in the employ of the Texas & New Orleans Railroad Company in the States of Texas and Louisiana, except general office employees, all of whom are resident either in the State of Texas or in the State of Louisiana, respectfully bring this their Bill of
6 Complaint on behalf of themselves and on behalf of said railway clerks in the employ of

the Texas & New Orleans Railroad Company in the States of Texas and Louisiana, except those employed in the general offices and on behalf of all such other persons as have an interest herein and may by proper proceedings become parties hereto, against Texas & New Orleans Railroad Company, a Texas corporation with its principal office and place of business in the City of Houston, Harris County, Texas, A. D. McDonold, a citizen and resident of the City of New York, New York County, New York, R. C. Watkins, a citizen and resident of New Orleans, La. P. C. Gebhart, a citizen and resident of the City of Dallas, Dallas County, Texas, F. C. Ehlinger, a citizen and resident of the City of Ennis, Ellis County, Texas, F. H. Bednark and J. A. Pryor, citizens and residents of the City of San Antonio, Bexar County, Texas, H. M. Lull, G. S. Waid, J. G. Torian, C. E. Armstrong, J. C. McDaniels and C. W. Derrington, citizens and residents of the City of Houston, Harris County, Texas, and the division superintendents, assistant division superintendents, train masters, yardmasters, special agents and other officers, agents and employees of said Texas & New Orleans Railroad Company exercising supervisory and directory powers over said railway clerks in the employ of Texas & New Orleans Railroad Company in Texas and Louisiana, as well as certain other employees of defendant railroad company hereinafter referred to, and thereupon complain and say:

I.

Plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisi-

ana (hereinafter called the Brotherhood) is a voluntary Association of Railway Clerks, Freight Handlers and Station Employees (except employees in general offices) who are employed by the Southern Pacific Lines in the States of Texas and Louisiana, that is by the Texas and New Orleans Railroad Company, and said organization has its principal office and headquarters at 211 Moore Building, San Antonio, Texas. In this connection plaintiffs say that the railways clerks, freight handlers and station employees herein referred to are those clerks, freight handlers and station employees who are employed by the defendant railroad company on its various lines and at its various stations and offices throughout the States of Louisiana and Texas and the clerks and employees herein mentioned and referred to means all of the railway clerks, freight handlers and station employees working in Texas and Louisiana for said defendant railroad company save and except such railway clerks as are employed by said defendant railroad company at and in its general office building on Franklin and Travis Streets in the City of Houston, Texas, and at and in its similar general office building in the City of New Orleans, Louisiana, and said excepted employees are referred to herein as "employees in general offices". Plaintiff Brotherhood was organized and formed as a voluntary association on or about September 1, 1918, and was first officially recognized, as the representative of said railway clerks employed by defendant Railroad Company in Texas and Louisiana, by virtue of and by reason of Supplement Number 7, to General Order Number 27 of the Director General of Railroads, effective September 1, 1918.

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The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has fourteen (14) local lodges located in various cities in the States of Texas and Louisiana. The membership of each of these local lodges consists of railway clerks employed by the Texas & New Orleans Railroad Company and other railroads in the city where the headquarters of such local chapter is located or at other points in the States of Texas and Louisiana.

The members of each of these local lodges who are in the employ of the Texas & New Orleans Railroad Company and each group of ten (10) or more members of plaintiff Brotherhood employed by the Texas & New Orleans Railroad Company at points in the State of Texas and Louisiana where there is not located
8 a local lodge, triennially elect, in accordance with the provisions of the Constitution and By-Laws of the plaintiff Brotherhood, a local chairman to represent and act for them. The said local chairmen located within each of the eleven (11) divisions into which the States of Texas and Louisiana have been subdivided by the plaintiff Brotherhood triennially elect a division chairman. These eleven (11) division chairmen constitute the System Board of Adjustment, Southern Pacific Lines, of the Plaintiff Brotherhood in the States of Texas and Louisiana and triennially elect a general chairman of such System Board of Adjustment of plaintiff Brotherhood who actively directs and manages the affairs of plaintiff Brotherhood and its members and is the representative designated and authorized by said plaintiff Brotherhood and its members to represent them in all matters relating to the affairs of the plaintiff Brotherhood and its members and to confer in their behalf and as their representa-

tive with the representatives of said Texas & New Orleans Railroad Company concerning questions of rates of pay, rules, working conditions and any and all other similar matters and to represent them in all proceedings before the United States Board of Mediation and in the Courts of this country, both Federal and State. By reason of the fact that continuously since the time of its formation and organization, to-wit: on or about September 1, 1918, the plaintiff Brotherhood and its various general chairmen have been specifically authorized and designated by a majority of the 1700, or thereabouts, railway clerks (except those employed in the General Offices) in the employ of the defendant Railroad Company in the States of Texas and Louisiana to represent them in all matters relating to questions of rates of pay, rules and working conditions and all other similar questions, and more particularly by reason of the fact that on September 21, 1923, and February 21, 1924, United States Railroad Labor Board in its decision Numbers 1971 and 2138, respectively, held that the plaintiff Brotherhood and its representatives were the legally authorized representatives of said railway clerks and ordered the Southern Pacific Lines in Texas and Louisiana to proceed with negotiations with the representatives of plaintiff Brotherhood concerning changes in rules and working conditions, which affected said railway clerks and said Southern Pacific Lines in Texas and Louisiana agreed to and did in fact comply with said order of the United States Railroad Labor Board, and that within the past six (6) weeks more than a majority, to-wit, more than 1100 of said 1700, or thereabouts, railway clerks have signed written authorizations to plaintiff Brotherhood and its General Chair-

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man to represent them in all matters relating to questions of rates of pay, the plaintiff Brotherhood and its General Chairman and other officers are the representatives authorized and designated to represent all of said 1700, or thereabouts, railway clerks in the employ of the defendant Texas & New Orleans Railroad Company (except employees in the General Offices) in all matters relating to questions of rates of pay, rules, working conditions and any and all other similar questions and to confer on behalf of said 1700, or thereabouts, railways clerks and as their representatives, with the representatives of said Texas & New Orleans Railroad Company concerning all of the aforesaid matters and to represent them in all proceedings before the United States Board of Mediation and in the Courts of this country, both Federal and State.

Plaintiff Brotherhood brings this suit as authorized by Equity Rules Numbers 37 and 38 on behalf of and as representative of all its members and of all railway clerks in the employ of the Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees) and in behalf of all other persons who may elect to associate themselves with plaintiffs as well as in behalf of all others who are or may be similarly situated (whether members of said Brotherhood or not). The members of plaintiff Brotherhood, the other railway clerks in the employ of said defendant Texas & New Orleans Railroad Company in Texas and Louisiana (except General Office employees) and the other and additional persons in whose behalf this suit is brought and who are not hereinabove specifically called by their names, number approximately seventeen hundred (1700) but the exact number and their identity are so subject to fluctuations and changes

by death or otherwise that it would be practically impossible to make all of them parties by name, and it is impracticable to bring all of them before the Court by name. All the persons in whose behalf this suit is brought are engaged in the same general class of employment for the same employer and form a general class of persons with a common and general interest in the subject matter of this suit. The plaintiff Brotherhood and the plaintiff H. W. Harper fairly represent the rights and interests of those in whose behalf they bring and prosecute this suit. Said employees are herein sometimes called plaintiff employees.

Plaintiff H. W. Harper is the General Chairman of the System Board of Adjustment of plaintiff Brotherhood and is invested with all the powers and authority of said office of said General Chairman as hereinabove referred to. He is a citizen and resident of San Antonio, Bexar County, State of Texas, with his principal office as such general chairman at 211 Moore Building, San Antonio, Texas. He brings this suit as authorized by Equity Rule Nos. 37 and 38 on behalf of and as representative of all of the members of plaintiff Brotherhood and all of the railway clerks in the employ of the Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees) and in behalf of all other persons who may elect to associate themselves with plaintiffs, as well as in behalf of all others who are or may be similarly situated—whether or not member of plaintiff Brotherhood.

The members of plaintiff Brotherhood, the other railway clerks in the employ of said defendant, Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees), and the other
11 and additional persons in whose behalf this

suit is brought and who are not hereinabove specifically called by their names, number approximately seventeen hundred (1700), but the exact number and their identity are so subject to fluctuations and change by death or otherwise that it would be practically impossible to make all of them parties by name, and it is impracticable to bring all of them before the Court by name. All the persons in whose behalf this suit is brought are engaged in the same general class of employment for the same employer and form a general class of persons with a common and general interest in the subject matter of this suit. The plaintiff H. W. Harper and the plaintiff Brotherhood fairly represent the rights and interests of those in whose behalf they bring and prosecute this suit.

II.

Defendant Texas & New Orleans Railroad Company (herein sometimes called the "railroad company") is a corporation, organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business in the City of Houston, Harris County, Texas, within the Southern District of Texas, Houston Division, and within the jurisdiction of this Honorable Court and engaged in the business of a common carrier by railroad and the owner and/or operator of all the Southern Pacific Lines in Texas and Louisiana and the employer of all the persons in whose behalf this suit is brought and prosecuted. In this connection plaintiffs say that said defendant Texas & New Orleans Railroad Company has, since March 1, 1927, and now is, the common carrier and railroad company by and through which each and all of the other rail-

road companies formerly constituting what was and is commonly known and called "Southern Pacific" Lines in Texas and Louisiana are now operated and controlled; that the exact terms and conditions of said arrangement are unknown to plaintiffs but are well known to defendants. A. D. McDonald, a citizen and resident of the City of New York, New York County, New York, is the president of said Texas
12 & New Orleans Railroad Company; H. M. Lull, a citizen and resident of the City of Houston, Harris County, Texas, is the Executive Vice-President of the Texas & New Orleans Railroad Company; G. S. Waid, a citizen and resident of the City of Houston, Harris County, Texas, is the Vice-President and General Manager of the Texas & New Orleans Railroad Company in Texas; R. C. Watkins, a citizen and resident of New Orleans, La., is the Vice-President and General Manager of the Texas & New Orleans Railroad Company in Louisiana; J. G. Torian, a citizen and resident of the City of Houston, Harris County, Texas, is the Assistant to Vice-Presidents and General Managers Waid and Watkins of said Texas & New Orleans Railroad Company, in both Texas and Louisiana; F. H. Bednark, a citizen and resident of the City of San Antonio, Bexar County, Texas, is Assistant Superintendent of the Texas & New Orleans Railroad Company, Houston Division; J. A. Pryor, a citizen and resident of the City of San Antonio, Bexar County, Texas, is the Supervisory Agent of the Texas & New Orleans Railroad Company, Houston Division; C. E. Armstrong, a citizen and resident of the City of Houston, Harris County, Texas, is Assistant Agent, Houston Freight Station of Texas & New Orleans Railroad Company; and P. C. Gebhart, a citizen and resi-

dent of the City of Dallas, Dallas County, Texas, is the local Freight Agent of the Texas & New Orleans Railroad Company at Dallas. The names of each and all of the defendant Division Superintendents, Assistant Division Superintendents, trainmasters, yardmasters, special agents and other officers and agents of the defendant Texas & New Orleans Railroad Company exercising supervisory and directory powers and authority over the plaintiff employees of said defendant Texas & New Orleans Railroad Company are not set forth herein as they are unknown to the plaintiffs and cannot be ascertained by plaintiffs, but are well known to defendants and form a class fairly represented by the named defendants. J. C. McDaniel is a citizen and resident of the City of Houston, Harris County, Texas; C. W. Derrington is a citizen and resident of the City of Houston, Harris County, Texas, and F. C.
13 Ehlinger is a citizen and resident of the City of Ennis, Ellis County, Texas, and each and all of said three defendants are employees of said defendant railroad company performing duties and services partly of a clerical nature, but in truth and in fact each and all of them have certain powers and authority over some or all of the plaintiff employees of defendant railroad company; that acting with the defendants are certain other employees whose exact identity is unknown to plaintiffs but is well known to defendants, and said three last named defendants, together with said others who are unknown to plaintiffs are acting for and on behalf and with the other defendants and said three named defendants together with their unknown associates form a class of persons with a common and general interest in the subject matter of this suit. The defendants whose names are not set

forth herein are not so specifically named for the reason set forth hereinabove that their exact identities are unknown to plaintiffs and their exact number and exact identity are so subject to change and fluctuation that it is impracticable to bring them before the Court by name.

III.

This is a suit of a civil nature which arises under the Constitution and laws of the United States, particularly under the Act of Congress of May 20, 1926, known as the Railway Labor Act, 44 Statutes at Large 577, and the laws of the United States relating to Interstate Commerce and is instituted pursuant to the provisions of said Railway Labor Act and the Laws of the United States relating to Interstate Commerce and also under the general equity jurisdiction of this Court, by reason whereof this Court has jurisdiction of this suit.

IV.

Immediately after its organization on or about September 1, 1918, plaintiff Brotherhood became active in the interests of the plaintiff employees as their representative to secure for them such higher rates of pay and better working rules and conditions, et cetera, as they were justly entitled to and since that date
14 has been continuously so active in representing said plaintiff employees in all such matters in all negotiations with defendant railroad company and in all proceedings before the United States Railroad Labor Board and United States Board of Mediation. On July 1, 1922, the plaintiff Brotherhood, after extended negotiations with the defendant railroad company and

proceedings before the United States Railroad Labor Board, in all of which the plaintiff Brotherhood and its officers were the sole representatives of the plaintiff employees, entered into a binding written contract entitled "Rules covering all Clerical and Station Employees, except general office forces, Southern Pacific Lines in Texas and Louisiana", which covered all the working rules and conditions under which the plaintiff employees were to continue in the employ of said defendant railroad company. Said contract was signed for the defendant railroad company by said J. G. Torian and for the plaintiff employees by the Plaintiff Brotherhood under the signatures of its General Chairman, Vice-General Chairman and General Secretary-Treasurer, as their sole representative. Except for certain amendments as to overtime and calls, Sunday and holiday work, vacations and sick leaves, which were agreed to in the form of a written contract between defendant railroad company and the plaintiff Brotherhood as the sole representative of plaintiff employees on May 9, 1924, after further extended negotiations between the representatives of said defendant railroad company and the representatives of plaintiff Brotherhood and further proceedings before the United States Railroad Labor Board in which the representatives of plaintiff Brotherhood were the sale representatives of plaintiff employees, the aforesaid Rules have remained in full force and effect since July 1, 1922, are still now in full force and effect and binding upon the parties thereto, and can only be changed in accordance with Rule 68 of said Rules, which provides:

"The foregoing rules supersede all previous rules and practices and are effective from July 1, 1922, and shall continue in effect until changed as provided herein or

under the provisions of the Transportation Act, 1920. Should either the employees or the Management desire to revise or modify these rules, thirty (30) days' written advance notice containing proposed changes shall be given and conference shall be held immediately upon the expiration of said notice unless another date is mutually agreed upon."

15 On May 11, 1923, plaintiff Brotherhood, as sole representative of plaintiff employees, and in accordance with the provisions of the Transportation Act of 1920, filed a written request with defendant railroad company for an increase in rates of pay and asked for a conference concerning same.

The request for an increase in rates of pay having been refused by defendant railroad company, plaintiff Brotherhood as sole representative of plaintiff employees, submitted the matter to the United States Railroad Labor Board, which in its decision No. 1986 awarded plaintiff employees an increase in rates of pay and fixed the wage scale under which the plaintiff employees are now employed by defendant railroad company.

On November 13, 1923, defendant railroad company entered into a written agreement with the plaintiff Brotherhood, as sole representative of plaintiff employees, concerning the application of said increase in rates of pay a copy of said agreement, being attached hereto, marked Schedule "A", and make [made] a part hereof as if set forth herein in full.

On November 2, 1925, the plaintiff employees having made known to plaintiff Brotherhood their feelings and belief that a further increase in rates of pay was imperative by reason of increased costs and standards of

living, and that they were entitled to same, by reason among other grounds of increased wages granted to other classes of employees of defendant railroad company, increased wages in other industries employing similar classes of labor, and the training, skill and degree of responsibility required in their particular class of employment, the plaintiff Brotherhood, acting through its general chairman, H. W. Harper, and on behalf of, at the request of and as representative of the railway clerks, freight handlers and station employees, in the employ of the Southern Pacific Lines in Texas and Louisiana (except General Office Employees) presented a petition to the defendant railroad company requesting an increase in wages amounting to substantially ten (10) cents an hour for each of the classes of employees just referred to and in accordance with the provisions of the Transportation Act of 1920, gave the said defendant railroad company thirty (30) days' notice of a desire to amicably negotiate an increase in the rates of pay of the aforesaid employees and requesting said defendant railroad company to name a date
16 upon which said carrier's representatives would meet with a committee of the plaintiff Brotherhood for the purpose of attempting satisfactory disposition of the question by agreement. On November 8, 1925, the Southern Pacific Lines in Texas and Louisiana, acting through said J. G. Torian as their representatives, addressed and sent a letter to "H. W. Harper, General Chairman B. of R. C." under the heading of "Request for increase in rates of pay for clerical and station service employees, representing by Brotherhood of Railway and Steamship Clerks", advising that as soon as said Torian had disposed of some pending matters, he would write again, naming a date for a

conference. On November 30, 1925, said Torian addressed and sent a letter to "H. W. Harper, General Chairman, B. of R. C.", under the heading of "Request for increase in rates of pay for clerical and station service employees, represented by Brotherhood of Railway and Steamship Clerks", advising "that I can meet your committee at 10 A. M., Tuesday, December 8, for the purpose of considering the wage request and other matters submitted and now pending." The said conference was postponed by mutual agreement until December 22, 1925, at which time said Torian, as representative of said defendant railroad company, met with said H. W. Harper and other officers of the plaintiff Brotherhood as representatives of the railway clerks, freight handlers, and station employees in the employ of the defendant railroad company in Texas and Louisiana (except general office employees) and discussed the question of rates of pay referred to in the petition of November 2, 1925, above referred to. On January 8, 1926, said Torian addressed and sent a letter to said H. W. Harper advising that the request of the railway clerks, freight handlers and station employees in the employ of the defendant railroad company in Texas and Louisiana for an increase in rates of pay was denied on the alleged grounds that "there have been no changes in conditions that would justify any increase." Neither in said letter nor at any other time during the negotiations just referred to did said Torian or any other representative of the Southern Pacific Lines in Texas and Louisiana raise any question as to the right of plaintiff Brotherhood and its officers to represent the railway clerks in the employ of the defendant railroad company in Texas and Louisiana (except general office employees) but on the con-

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trary at all such times did in fact deal with said plaintiff Brotherhood and its officers (including plaintiff Harper) and recognize them as such representatives.

On January 23, 1926, the plaintiff Brotherhood as representative of said railway clerks, freight handlers and station employees in the employ of the Southern Pacific Lines in Texas and Louisiana, submitted the question of rates of pay raised in the aforesaid petition of November 2, 1925, to the United States Railroad Labor Board for its decision in accordance with the provisions of the Transportation Act of 1920. On February 6, 1926, the Southern Pacific Lines in Texas and Louisiana, acting by and through said G. S. Waid and R. C. Watkins, filed their answer with the United States Railroad Labor Board to the aforesaid submission of the plaintiff Brotherhood. This answer, copy of which is in the possession of the defendant railroad company and with the contents of which defendants are familiar and well informed, is entitled "Request of Clerical and Station Employees (other than general office employees) for an increase in the rates of pay that were established under Labor Board Decisions Nos. 1986 and 2776", and throughout it are numerous recognitions of the right of the plaintiff Brotherhood and its officers to represent the said railway clerks (other than general office employees) in the employ of the Southern Pacific Lines in Texas and Louisiana, such as "the Committee representing the employees", "under date of November 2, 1925, the Committee representing the clerical and station service employees (except general office employees) filed request for increase in rates of pay, which is herewith produced", "the request of the employees" and "representatives of the employees" referring to and meaning in each instance the plaintiff Brotherhood and

its representatives as representatives of plaintiff employees, and said Southern Pacific Lines in Texas and Louisiana did in fact recognize and deal with the plaintiff Brotherhood and its officers as the legal representatives of the said railway clerks (except general
18 office employees") in the employ of the Southern Pacific Lines of Texas and Louisiana in connection with all proceedings before the United States Railroad Labor Board relating to the wage dispute above referred to and the said United States Railroad Labor Board did also so recognize the plaintiff Brotherhood and its officers.

Under date of May 12, 1926, the United States Railroad Labor Board having been advised of the passage by Congress of the Railway Labor Act 44, Statutes at Large 577, abolishing the United States Railroad Labor Board, remanded by its decision No. 4197 all pending disputes, including the aforesaid wage dispute between said defendant railroad company and its railway clerks, freight handlers and express and station employees (except general office employees) to the parties in interest "for the purpose of further discussion and settlement if possible".

In compliance with the above decision of the United States Railroad Labor Board, the plaintiff Brotherhood by and through its general chairman, said H. W. Harper, on July 6, 1926, wrote the said J. G. Torian, as representative of the defendant railroad company in part as follows: "We desire to comply with the decision of the Board and resume negotiations in regard to the dispute, U. S. R. R. L. B. Docket No. 5171-22, to the end that it may be possible to agree upon a basis for satisfactory settlement and it will be appreciated if you will name a date, which meets your convenience, for conference with our committee for that purpose."

In compliance with the aforesaid request, said Torian set July 23, 1926, for the conference, and on that date, as the representative of defendant railroad company, he met with said H. W. Harper and other officers of plaintiff Brotherhood, as representatives of the railway clerks, freight handlers and station employees of the defendant railroad company in Texas and Louisiana (except general office employees) and discussed the question of increases in rates of pay. At the time no question was raised as to the right of plaintiff Brotherhood and said H. W. Harper to represent said class of employees, but, on the contrary, their right to so do was specifically recognized by said defendant railroad company.

On August 16, 1926, an appeal was taken
19 by plaintiff Brotherhood acting by and through said H. W. Harper, its general chairman, as representative of the aforesaid class of employees from an unfavorable decision of said Torian, to said G. S, Waid, Vice-President and General Manager, Southern Pacific Texas Lines, and said R. C. Watkins, Vice-President and General Manager, Southern Pacific Louisiana Lines. On August 23, 1926, said Waid and Watkins in a joint letter addressed to "H. W. Harper, General Chairman B. of R. C." affirmed the aforesaid decision of said Torian in refusing said request for an increase in rates of pay and said in part "your joint letter of August 16, relating to request filed by your committee for increase in rates of pay of clerical and station employees on these lines, who are represented by the Brotherhood of Railway and Steamship Clerks". On October 15, 1926, plaintiff Brotherhood submitted the aforesaid controversy concerning the request for an increase in rates of pay of November 2, 1925, of the

railway clerks, freight handlers and station employees of the defendant railroad company in Texas and Louisiana (except general office employees) to the United States Board of Mediation in accordance with the provisions of the Railway Labor Act, 44 Stat. 577, with the request to said U. S. Board of Mediation "to use your good offices with as little delay as possible, to the end that satisfactory settlement may be accomplished, through your mediation."

On November 24, 1926, J. W. Walsh, a Mediator appointed by the U. S. Board of Mediation, arrived in the City of Houston, Texas, to consider the aforesaid controversy. The defendant railroad company objected to Mr. Walsh acting only on the alleged grounds that he was not authorized under the Railway Labor Act to act for the U. S. Board of Mediation and nothing came immediately of this effort of the plaintiff Brotherhood to secure a settlement of said controversy as to rates of pay by mediation. No objection was raised at the aforesaid hearing before Mediator Walsh by said Southern Pacific Lines in Texas and Louisiana to the right of the plaintiff Brotherhood and of said H. W. Harper, its General Chairman, and of its other repre-
20 sentatives who appeared as the sole representatives of the aforesaid class of employees to act as such representatives.

The plaintiff Brotherhood, however, persisted in its efforts to secure settlement of the aforesaid controversy by mediation and made numerous requests to the U. S. Board of Mediation to assign one of its members to consider this controversy. Finally, on June 2, 1927, Honorable Pat Neff, Ex-Governor of Texas, who had, in March, 1927, been appointed and was then a member of the U. S. Board of Mediation, arrived in Houston

and proceeded to consider this controversy along with four other railroad mediation cases and continued the consideration of the same, holding various conferences with said H. W. Harper and other officers of plaintiff Brotherhood and with representatives of said defendant Texas & New Orleans Railroad Company until, on June 15, 1927, he adjourned the further consideration of the same until he had finished with the annual meeting of the U. S. Board of Mediation which was scheduled to start June 27, 1927, at Washington, D. C., as appears from the letter of said Ex-Governor Neff to Richard P. Dee, Vice Grand President of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees under date of June 15, 1927, a true copy of which letter is attached hereto, marked Schedule C and made a part hereof the same as if set forth fully herein.

V.

Prior to the arrival of said Former Governor Neff in the City of Houston, Texas, on June 2, 1927, the Southern Pacific Lines in Texas and Louisiana, all of which were taken over by the defendant Texas & New Orleans Railroad Company on March 1, 1927, and have since that time been under its ownership and/or control, had not questioned the right and authority of the plaintiff Brotherhood or of plaintiff H. W. Harper, its general chairman or of other officers and representatives of plaintiff Brotherhood to represent all of the railway clerks (except general office employees) in the employ of said Southern Pacific Lines in Texas and Louisiana, i. e., in the employ of the Texas and New Orleans Railroad Company, in the aforesaid controversy as to rates of pay

nor in fact as to any other matter, but had since November 2, 1925, and prior thereto, expressly
21 recognized the sole and exclusive right and authority of said plaintiff Brotherhood, plaintiff H. W. Harper and other officers of plaintiff Brotherhood to represent said class of employees in said controversy as to rates of pay and in other similar matters.

As late as March 18, 1927, the defendant railroad company entered into a written agreement concerning seniority districts, entitled "Memorandum of Agreement covering changes in Senority District, Clerical and Station Employees—Houston, Victoria and Terminal Divisions" with plaintiff employees, who were represented in the negotiations leading up to the signing of said agreement solely by plaintiff Brotherhood and said agreement is signed "For the Employees: H. W. Harper, General Chairman, B. of R. C." The original of said agreement is in the possession of the defendant railroad company and the defendants are well informed concerning same.

However, on or about June 5, 1927, the exact date being unknown to plaintiffs but well known to defendants, the defendant Texas & New Orleans Railroad Company and its general officers, including among others A. D. McDonald, its President, H. M. Lull, its Executive Vice-President, G. S. Waid, its Vice-President and General Manager, Texas Lines, R. C. Watkins, its Vice-President and General Manager, Louisiana Lines, and J. G. Torian, its Assistant to Vice-President and General Managers, unlawfully conspired together and with said other defendants, and undertook, instigated and encouraged the formation of a so-called "company" union of railway clerks in the employ of said defendant Texas & New Orleans Railroad Company in Texas and Lou-

isiana (except general office employees) to be known as "the Association of Clerical Employees—Southern Pacific Lines" for the express purpose of interfering with, influencing and coercing the said plaintiff railway clerks concerning the formation and maintenance of labor organizations among themselves and the designation by said railway clerks of a representative or representatives to represent and act for them in the aforesaid controversy concerning rates of pay then pending before said U. S. Board of Mediation and in similar matters and to cause a sufficient number of said railway clerks to cancel their authorizations to plaintiff Brotherhood and its representatives to represent them in the aforesaid rates of pay controversy before said U. S. Board of Mediation and in similar matters so that the plaintiff Brotherhood and its representatives would not have the authorization of a majority of said railway clerks to so represent them and thus necessitate the plaintiff Brotherhood withdrawing its submission of the rates of pay controversy from the consideration of said U. S. Board of Mediation.

22

On or about June 5, 1927, and on various dates since that time, at the direction and instigation of the said defendant Texas & New Orleans Railroad Company and its general officers, including those hereinabove mentioned, F. H. Bednark, J. A. Pryor, P. C. Gebhart and certain other of defendant Texas & New Orleans Railroad Company's division superintendents, assistant division superintendents, trainmasters, yardmasters, special agents and other officers and agents of said Texas & New Orleans Railroad Company, having and exercising supervisory and directory powers and authority over the railway clerks hereinabove referred to, and said J. C. McDaniels, C. W. Derrington, F. C. Ehlinger and

certain other employees of defendant railroad company referred to hereinabove whose exact names and identities are unknown to plaintiffs, but well known to the defendants presented to all or to the large majority of the aforesaid railway clerks for signature by them a petition or petitions reading as follows or substantially so:

"We, the undersigned clerical employees of the Terminals Division, Texas and New Orleans Railroad Company, after careful forethought and consideration are desirous of reviving the former organization known as "The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana" and do hereby petition the Management of these lines to permit us to take such steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the Management through this proposed organization. We desire Mr. J. C. McDaniels as our local representative."

and used the influence and authority of their positions in an endeavor to persuade and coerce all of the railway clerks who were subordinate to them and over whom they had the power of hiring, firing and pro-
23 moting in the service and/or similar authority, to sign the aforesaid petitions and renounce the plaintiff Brotherhood and its representatives as their authorized representatives in the aforesaid rates of pay controversy then pending before the U. S. Board of Mediation and in similar matters.

Numerous of the said railway clerks were interviewed by said Bednark, Armstrong, Derrington, McDaniels, Gebhart and other officers, agents, representatives and

employees of the defendant railroad company hereinabove mentioned in the preceding paragraph hereof, and asked if they were members of plaintiff Brother and told in substance that the defendant Texas & New Orleans Railroad Company would not grant any increase in rates of pay through negotiations with the plaintiff Brotherhood or its representatives, that plaintiff Brotherhood was not doing them any good, that the officers of plaintiff Brotherhood were only "feathering their own nests", but that if they and sufficient other railway clerks signed the petition to have "The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana" act as their representative in the rates of pay controversy then pending before the U. S. Board of Mediation and in similar matters and renounced representation in such matters by the plaintiff Brotherhood, then defendant Texas & New Orleans Railroad Company would distribute Seventy-five Thousand Dollars ($75,000.00) per year among them, that is among the 1700, or thereabouts, railway clerks in the employ of defendant Texas & New Orleans Railroad Company in the States of Texas and Louisiana by way of annual increases in wages. Others of said railway clerks have been threatened with losses of vacations and similar privileges if they did not sign such petitions and at least one of said railway clerks who did not sign said petition has been deprived of his pass privileges.

The means and methods taken by the direction and at the instigation of the defendant Texas & New Orleans Railroad Company and its general officers, including those above named, to secure signatures to the aforesaid petition are set forth more fully in the affidavits of a large number of said railway clerks at-

24 tached to this petition, marked Schedule "B"

and made a part hereof as if fully set forth herein. Said Torian as representative of said defendant Texas & New Orleans Railroad Company has caused for the purposes hereinabove referred to letters bearing dates of June 17 and June 24, 1927, to be circulated among the said railways clerks and/or to be posted upon the bulletin boards of said Texas & New Orleans Railroad Company at various points in the States of Texas and Louisiana, of which letters the following are correct copies or substantially so:

"Propaganda Being Circulated by General Committee of the Brotherhood of Railway Clerks.

Houston, Texas, June 17, 1927.

Personal.
Mr. C. R. Morrill, Supt., El Paso,
Mr. A. D. Mims, Supt., San Antonio,
Mr. G. B. Goodloe, Supt., Victoria,
Mr. H. J. Micksch, Supt., Houston,
Mr. E. A. O'Donnell, Supt., Houston,
Mr. R. M. Glover, Supt., Lafayette,
Mr. P. B. Torian, Supt., New Orleans,
Mr. B. S. Hollimon, Supt., Ennis,
Mr. J. H. Walsh, Supt., Austin,
Mr. R. R. Wood, Gen. Storekeeper, Houston,
Mr. J. T. Connor, Supt., T&NO Shops, Houston,
Mr. J. S. Netherwood, Asst. Supt., MP&E, Algiers.

Gentlemen:

I enclose copy of a printed circular that is being circulated by the Organization of the Brotherhood of Railway Clerks, apparently for the purpose of misleading our clerical and station service employees and creating

a wrong impression in order to secure their signatures. The misleading character of the numerous circulars recently sent out by this organization is aptly illustrated by the second paragraph of the circular enclosed herewith, the evident purpose of which paragraph is to convey the impression that mediation proceedings on the wage request filed by the organization of the Brotherhood of Railway Clerks has been going on since June 2nd. This is entirely untrue. We have been meeting with a member of the United States Board of Mediation since June 3rd but have handled only cases involving employees other than the clerical employees. The case filed with the Board by the Organization of the Brotherhood of Railway and Steamship Clerks has not been reached in conference and has not been gone into with the member of the United States Board of Mediation. On request of the Mediator handling the negotiations here, conferences were postponed yesterday in order that he could attend the annual meeting of the Board which is to be held in Washington on June 27.

The purpose of the misleading circulars referred to above is quite evident and you are at liberty to show this letter to any of our clerical employees who are interested in the matter.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M."

25 "Propaganda Being Circulated by General Committee of Brotherhood of Railway Clerks.

Houston, Texas, June 24, 1927.

Personal.

Mr. C. R. Morrill, Supt., El Paso, Texas,
Mr. A. D. Mims, Supt., San Antonio, Texas,
Mr. G. B. Goodloe, Supt., Victoria, Texas,
Mr. H. J. Micksch, Supt., Houston, Texas,
Mr. E. A. O'Donnell, Supt., Houston, Texas,
Mr. R. M. Glover, Supt., Lafayette, La.,
Mr. P. B. Torian, Supt., New Orleans, La.,
Mr. B. S. Hollimon, Supt., Ennis, Texas,
Mr. J. H. Walsh, Supt., Austin, Texas,
Mr. L. B. Wood, Gen. Storekeeper, Houston, Texas,
Mr. J. T. Connor, Supt., T. & N. O. Shops, Houston, Texas,
Mr. J. S. Netherwood, Asst. Supt. MP&E, Algiers, La.

Gentlemen:

I enclose copy of circular letter issued June 18 by General Chairman Harper of the Brotherhood of Railway Clerks and copy of letter from Mediator Neff, which is referred to therein. The circulars and bulletins being sent out by this committee are of such an undignified and abusive character that they are beneath our notice, but a number of the statements made are intentionally misleading and if not corrected would create a wrong impression. The evident purpose of the circular of June 18, that is enclosed herewith, is to create in the minds of our clerical and station employees an impression that the demands of the Railway Clerks Organization have been taken up with us by Governor Neff, representing the United States Board of Mediation and that mediation proceedings were begun and are under way. This is not true.

We met Governor Neff and were in conference for about twelve days, going into detailed discussion of two cases that involved other classes of employees and did not involve the clerks' organization. We did not complete the discussion of these two cases and the case of the Railway Clerks' organization, which was third on the list, was not reached and was not taken up in conference, except that we advised the Mediator that when that case was reached in regular order we would take the position that the organization of the Brotherhood of Railway Clerks did not have the authority of a majority of our employees to represent them.

Would advise further that I have had a communication from a member of the committee representing the clerical employees who desire to handle their affairs direct with the management and I will meet that Committee as soon as the organization of the Committee has been completed.

Yours truly,
(Signed) J. G. TORIAN,
Asst't to V. P. & G. M."

The plaintiffs are informed and believe that the defendant Texas & New Orleans Railroad Company and its general officers, including those above named, have selected J. C. McDaniels, C. W. Derrington, F. C. Ehlinger and certain other chief clerks and employees of similar rank and position to manage and
26 direct the affairs of and to become officers of the new so-called "company" union and have used their influence and powers of coercion and intimidation to bring this about with the purpose and intent to be in a position to direct the policies and affairs of this so-called "Company" union in the interests of

the defendant Texas & New Orleans Railroad Company rather than in the interests of the railway clerks and other employees on whose behalf this suit has been brought and is being prosecuted and thus prevent said railway clerks from freely, and without interference, influence or coercion exercised by the defendant Texas & New Orleans Railroad Company, contracting by means of collective bargaining through representatives of their own choice with said railroad company for their labors and services. Said McDaniels and the other employees referred to herein just above do not come within the class of railway clerks represented by plaintiff Brotherhood and on whose behalf Brotherhood has brought the above referred to proceedings before the United States Board of Mediation for an increase in rates of pay and will not be directly, at least, affected by any increase of pay granted thereby and their interests are not in common with the railway clerks on whose behalf this suit has been brought and is being prosecuted and in past disputes over wages and working conditions they have favored and actively supported the position taken by said defendant Texas & New Orleans Railroad Company rather than the position of said railway clerks and have always shown a disposition to follow out the instructions of said defendant in all such matters. Accordingly any union or other organization headed by said McDaniels and the other said employees referred to hereinabove in this paragraph would not represent the interests of the railway clerks on whose behalf this suit has been brought and is being prosecuted but rather the interests of and be a mere "puppet" of said defendant Texas & New Orleans Railroad Company.

VI.

The matters referred to in the fifth paragraph of this Bill of Complaint constitute violations by the
27 said Texas & New Orleans Railroad Company and the other defendants named herein, among other things, of the rights given to plaintiffs and to said railway clerks on whose behalf this suit has been brought and is being prosecuted, by the provisions of the Railway Labor Act 44, Stat. 577, particularly Section 2 thereof, which provides in part as follows:

First: "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pays, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second: All disputes between a carrier and its employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third: Representatives, for the purpose of this Act (chapter), shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association or by other means of collective action, without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other."

in that while as above set forth the plaintiff Brotherhood and its officers, as representatives of the aforesaid railway clerks have exerted every reasonable effort to settle the aforesaid dispute as to rates of pay in order to avoid any interruption to commerce, said defendants have not used any reasonable effort to do so, but, on the contrary, have not permitted representatives of said railway clerks to be designated by said railway clerks "in such manner as may be provided in their • • • unincorporated association or by other means of collective action, without interference, influence or coercion exercised by" said defendants "over the self-organization or designation of representatives" by said railway clerks, and have deprived said railway clerks of the right to be represented by representatives of their own choice as more fully set forth hereinabove in the fifth paragraph of this petition and by reason of the foregoing, the aforesaid defendants should be enjoined from further violating the aforesaid rights of
28 the plaintiffs and of said railway clerks, on whose behalf this suit has been brought and is being prosecuted, the aforesaid rights being valuable property rights of said plaintiffs and said railway clerks. The foregoing also constitutes a declared intention by the defendants to violate and/or breach Section (b), Rule 56, of the agreement as to working rules and conditions of employment entered into in writing between plaintiff Brotherhood, as representative of said railway clerks, and the Southern Pacific Lines in Texas and Louisiana on July 1, 1922, and still in full force and effect, which provides as follows:

"Sec. (b). No discriminations will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organizations."

and the said defendants, and each of them, should be enjoined from so violating said agreement, and from influencing, coercing and intimidating said railway clerks by threats to so violate said agreement.

VII.

If the defendants are successful in persuading coercing, influencing and intimidating sufficient railway clerks to renounce representations by the plaintiff Brotherhood so that said plaintiff Brotherhood will no longer represent a majority of said railway clerks, it will not be able or be in a position to proceed with the present or other mediation proceedings before the United States Board of Mediation and said railway clerks, on behalf of whom this suit has been brought, and is being prosecuted, will be deprived of important property rights by way of loss of increased wages, and by way of being denied the right to contract for their labor and services with defendant Texas & New Orleans Railroad by the means of collective bargaining through representatives of their own choice, which is a
29 most valuable property right, since by reason thereof they have been able to obtain higher wages, shorter working hours, better working conditions, et cetera, and many of said railway clerks who are members of the plaintiff Brotherhood, and on whose behalf this suit has been brought and is being prosecuted, will be deprived of further important property rights in that if the defendants succeed in their purpose to supplant

the plaintiff Brotherhood with a so-called "Company" union, the said railway clerks on whose behalf this suit is brought and prosecuted, will be forced to withdraw from membership in plaintiff Brotherhood and the plaintiff Brotherhood will of necessity be dissolved, there being no further purpose for its existence, and plaintiff Brotherhood and its members will lose their interest in certain valuable real estate and other property owned by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of which the plaintiff Brotherhood forms a part, and will lose the insurance protection afforded them by the Death Benefit Fund of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the estates of each member in plaintiff Brotherhood or the beneficiaries named in the policies issued to each such member against said Fund being entitled on the deaths of such members to be paid out of said Fund varying amounts of money up to $1,500.00, depending upon the period of membership of the particular member dying, and by reason thereof, the defendants should be enjoined from further violating the rights of the plaintiff and of said railway clerks as aforesaid and from endangering their property rights as aforesaid.

VIII.

As set forth fully in the fifth paragraph of this Bill of Complaint, the defendants herein have and are influencing, coercing and intimidating many of the plaintiff employees in an endeavor to cause them to breach the agreements referred to in the first paragraph of this Bill of Complaint, which they have entered into with the plaintiff Brotherhood during

the past six weeks, whereby the said plaintiffs have authorized the plaintiff Brotherhood to represent them in the present proceedings before the United States Board of Mediation and in any other proceedings relating to the present wage controversy referred to hereinabove by designating the new so-called "Company" union to represent them in said proceedings in the place and stead of the plaintiff Brotherhood, and said defendants have and are further influencing, coercing and intimidating the plaintiff employees who are members of the plaintiff Brotherhood in an endeavor to cause them to breach and violate their contracts of membership with the plaintiff Brotherhood and the rules, by-laws and constitution of the plaintiff Brotherhood referred to in the first paragraph of this Bill of Complaint by designating the new so-called "Company" union to represent them in the aforesaid proceedings and in all other matters concerning present and future relations and dealings between defendant railroad company and plaintiff employees in the place and stead of the plaintiff Brotherhood, and the said defendants should be enjoined and restrained from further so influencing, coercing and intimidating plaintiff employees in an endeavor to cause them to breach their agreements and contracts as aforesaid.

IX.

If the injunctions and restraining orders hereinafter prayed for are not granted, the plaintiffs and those on whose behalf this suit has been brought and is being prosecuted will suffer great and irreparable loss and damage by reason of the matters hereinabove
31 set forth and they are without due and adequate remedy at law and are without any remedy whatever other than by injunction and restrain-

ing orders. Ex-Governor Neff, member of the United States Board of Mediation, on Wednesday, July 20, 1927, resumed the mediation hearings in the City of Houston, Texas, which he temporarily adjourned on June 15, 1927, as set forth in the fourth paragraph of this Bill of Complaint. During the period, July 20 to July 23, 1927, he has been holding mediation proceedings between the defendant railroad company and certain other of its employees not involved in this suit, and on Saturday afternoon, July 23, 1927, he advised the representatives of plaintiff Brotherhood that he had finished with the mediation proceedings just referred to and would, on Monday, July 25, 1927, take up for consideration the mediation proceedings between defendant railroad company and the plaintiff employees referred to more fully in the fourth paragraph of this Bill of Complaint. As set forth in the fifth paragraph of this Bill of Complaint (see Torian's letter of June 24, 1927, set forth therein) said defendant railroad company has advised Ex-Governor Neff that with regard to said mediation it "would take the position that the organization of the Brotherhood of Railway Clerks did not have the authority of a majority of our employees to represent them." Plaintiffs are informed and believe that the defendant railroad company intends to maintain this position and will advise Ex-Governor Neff on Monday, July 25, 1927, that it refuses to mediate with plaintiff employees through the representations of plaintff [plaintiff] Brotherhood only on the alleged grounds that the plaintiff Brotherhood no longer represents a majority of plaintiff employees. Plaintiffs further allege that the defendants are now making every endeavor to influence, coerce and intimidate sufficient additional plaintiff employees to cancel their representa-

tion in said mediation and other proceedings by plaintiff Brotherhood and in place and stead thereof designate the aforesaid so-called "Company" union to represent them in said proceedings, so that the
32 plaintiff Brotherhood will not at the time of said proceedings have the authorization of a majority of plaintiff employees to represent them.

Accordingly an immediate restraining order is necessary to prevent plaintiffs and those in behalf of whom this suit has been brought and is being prosecuted from sustaining great and irreparable loss and damage by reason of the fact that defendants may at any moment be successful in persuading, coercing, influencing and intimidating sufficient railway clerks to renounce representation by the plaintiff Brotherhood so that said plaintiff Brotherhood will no longer represent a majority of said railway clerks and will not be able or be in a position to proceed with the present or other mediation proceedings before the United States Board of Mediation or other proceedings in the interest of said employees and said railway clerks on behalf of whom this suit has been brought and is being prosecuted will be deprived of important property rights by way of loss of increased wages and by way of being denied the right to contract for their labor and services with defendant Texas & New Orleans Railroad Company by the means of collective bargaining through representatives of their own choice, which is a most valuable property right, since by reason thereof they have been able to obtain higher wages, shorter working hours, better working conditions, et cetera, and many of said railway clerks who are members of the plaintiff Brotherhood, and on whose behalf this suit has been brought and is being prosecuted, will be deprived of further im-

portant property rights in that if the defendants succeed in their purpose to supplant the plaintiff Brotherhood with a so-called "Company" union, the said railway clerks on whose behalf this suit is brought and prosecuted will be forced to withdraw from membership in plaintiff Brotherhood and the plaintiff Brotherhood will of necessity be dissolved, there being no further purpose for its existence and plaintiff Brotherhood and its members will lose their interest in certain valuable real estate and other property owned by the
33 Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of which the plaintiff Brotherhood forms a part, and will lose the insurance protection afforded them by the Death Benefit Fund of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the estates of each member in plaintiff Brotherhood or the beneficiaries named in the policies issued to each such member against said Fund being entitled on the deaths of such members to be paid out of said Fund varying amounts of money up to $1,500.00, depending upon the period of membership of the particular member dying.

That practically all of the 1700 clerical employees of defendant railroad company herein referred to really and sincerely desire plaintiff Brotherhood and its officers and representatives to act for and represent them in this and other matters concerning wages, working conditions, and but for such undue and improper influence, coercion, interference and intimidation of defendants each and all of said employees would so openly express themselves.

Wherefore, plaintiffs pray that:

First: A temporary restraining order be granted and issued forthwith by this Honorable Court enjoining and restraining each and all of the defendants from in any way or manner interfering with, influencing, intimidating or coercing plaintiff employees or any of said 1700 employees referred to herein with respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding disputes between said employees and the defendant railroad company as employer, as well as for any and all other purposes of said Railway Labor Act, 44 Statutes at Large 577; and further restraining and enjoining the defendants and each of them from in any way or manner breaching or violating the contract of employment dated July 1, 1922, and the terms and conditions thereof as now existing between said
34 defendant railroad company and its railway clerks and other plaintiff employees, particularly Section (b) of Rule 56 thereof, which provides that "No discrimination will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organizations"; and further restraining and enjoining each and all of said defendants from using or attempting to use any purported right or authority to appear for, act for or to represent in any way said 1700 clerical employees herein referred to in connection with the consideration or decision of any dispute or difference as to wages, working conditions, hours or other similar matters between said defendant railroad company as employer and said 1700 clerks as employees; and further restraining and enjoining each and all of said defendants from further organizing, promoting, fostering or encouraging any so-called "Company union" of said

1700 clerical employees, herein referred to, as well as from in any way or manner preventing or discouraging said employees from becoming or remaining members of plaintiff Brotherhood.

Second: That a notice, summons, subpoena or other proper process issue to each and all of said defendants to appear and show cause, if any, they have, why a temporary injunction should not be granted and issued exactly like said temporary restraining order hereinabove prayed for.

Third: That upon final trial and hearing of this cause said restraining orders and injunctions be in all things made permanent and perpetual. And,

Fourth: For such other and further relief as may be proper in the premises.

To the end that above relief may be obtained, plaintiffs respectfully pray that the Court direct that a writ of subpoena be directed to the defendants, and that service be had in the manner provided by law, commanding them on a certain day to appear and answer this Bill of Complaint, under oath, and to grant unto plaintiffs such hearing, or hearings, as shall be meet and proper to enable the Court to grant the relief prayed for herein and to command the defendants to abide by and perform such orders or decrees as the Court may deem proper and as may be required by equity and good conscience.

35

FULBRIGHT, CROOKER &
FREEMAN,
JOHN H. CROOKER and
CARL G. STEARNS,
Attorneys for Plaintiffs.

The State of Texas,
County of Harris.

H. W. Harper, being first duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause, and the General Chairman of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, one of the plaintiffs in the above entitled cause, and that he has read the above and foregoing Bill of Complaint and knows the contents thereof, and that the allegations therein contained are true.

H. W. HARPER.

Subscribed and sworn to before me this the 25th day of July, A. D. 1927.

JESSIE E. WITTMAN,
(Seal) Notary Public, Harris
County, Texas.

7/25/27.

Upon consideration of the within petition, it is ordered that a rule issue to defendants, Texas & N. O. R. R. Co., to appear before me on Thursday, July 28, 1927, at 10 A. M., in Chambers, to show cause why the temporary injunction prayed for should not issue.

J. C. HUTCHESON, JR.,
Judge.

36 EXHIBIT "A."

Morgan's Louisiana & Texas Railroad & Steamship Company.
Louisiana Western Railroad Company.
Iberia & Vermilion Railroad Company.
The Galveston, Harrisburg & San Antonio Railway Company.
Texas & New Orleans Railroad Company.
Houston & Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston & Shreveport Railroad Company.
Southern Pacific Terminal Company.
Direct Navigation Company.

Houston, Texas, November 13, 1923.

Application of Decision No. 1986, United States Railroad Labor Board.

Increase in Pay of Clerical Employees.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

At our conference today, we discussed the questions of application of the wage award of Decision No. 1986 of the United States Railroad Labor Board to the Clerical and Station forces on these lines who come under the decision and are covered by Sections 1, 2, 3, 4 and 5, Article 1, of the award and you stated that you were agreeable to making a flat application of the award just as it reads, giving to each employee in each class

the hourly increase that is specified in the above mentioned Sections 1, 2, 3, 4 and 5 of Article 1 and without varying from the hourly increases awarded.

If my understanding is correct and this flat application of the award meets your approval, kindly let me have your acknowledgment.

Yours truly,
(Signed) J. G. TORIAN,
Ass't to V. P. & G. M.

Accepted.
(Signed) H. W. HARPER,
General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Service Employees

37 EXHIBIT "B."

State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared A. R. Campbell, who, being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway, Texas and Louisiana Lines, in the Local Freight Office at Houston, Texas, as claim clerk, and have been in the service of the Southern Pacific in a clerical capacity since August, 1923, under the supervision of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I am a member of the Brotherhood of Railway Clerks and have been a member continuously since May, 1924.

On or about June 10th, 1927, during the forenoon, during business hours, I was approached by Mr. C. E. Armstrong, Assistant Agent, who handed me a petition which I causually glanced at but did not read, and handed it back to him without comment, merely shaking my head as an indication that I would not sign, he then said they tell me that they have seventy-five thousand dollars ($75,000.00) with which to give the clerks an increase in wages and they say that they are not going to give a cent through the Brotherhood of Railway Clerks. At the time of this conversation with Mr. Armstrong I was checking freight out of cars.

A. R. CAMPBELL.

Subscribed and sworn to before me this 19th day of July, A. D. 1927.

F. W. TURNER,
Notary Public, in and for
Harris County, Texas.

(Seal)

38 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared J. G. Miller, who, being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway Company, Texas and Louisiana Lines, in the Local Freight Office at Houston, Texas, as tonnage clerk and have been in the service of the Southern Pacific Railway Company in a clerical capacity since April 1st, 1927, under the direct supervision of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I

am a member of the Brotherhood of Railway Clerks and have been a member since 1920. On or about the 10th day of June, during business hours, Mr. C. E. Armstrong, Assistant Agent, approached me with a petition and said in effect as follows: The Railway Company has $75,000.00 to give the clerks when represented by another organization other than the Brotherhood of Railway Clerks, but they will not give an increase in pay to the clerks through the Brotherhood. I did not read the petition and told Mr. Armstrong that the Brotherhood of Railway Clerks have represented me satisfactorily since 1920 and that they will represent me eight more years if I still remain in railway service. This occurred during the forenoon between the hours of 8:00 and 11:45 o'clock.

J. G. MILLER.

Subscribed and sworn to before me this 19th day of July, A. D. 1927.

F. W. TURNER,
Notary Public, in and for
Harris County, Texas.

(Seal)

39 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared J. G. Miller, who, being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway Company, Texas and Louisiana Lines, in the Local Freight Office at Houston, Texas, as tonnage clerk, and have been in the service of the Southern Pacific Rail-

way Company in a clerical capacity since April 1st, 1927, under the direct supervision of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I am a member of the Brotherhood of Railway Clerks and have been a member since 1920. On or about the 7th day of July, 1927, Mr. J. C. McDaniels, Chief Clerk at Englewood Yards, during business hours, about 3 P. M., instructed me to report in Mr. Sanders' office, where I was introduced to Mr. Derrington, Chief Clerk to Superintendent Terminals, who first asked me my name and upon my reply he made a record of same. He asked me if I was a member of the Brotherhood of Railway Clerks and I told him yes. He then said the management acknowledges that the clerks need an increase in pay but they will not get a cent through the Brotherhood of Railway Clerks, that the Railroad Company does not have to meet the mediator or the Board of Arbitration. That they can refuse point blank to either mediate or arbitrate. I asked Mr. Derrington why the Government should have high salaried men in Washington to make laws when the Railroad Company can refuse to abide by them. He showed me certain sections of what he said was the Railway Labor Act and stated that it was not compulsory for the management to meet with a mediator of the Board of Arbitration. He told me that the clerks would not get an increase in wages through the Brotherhood of Railway Clerks but would get a substantial increase if McDaniels was designated to represent the clerks. I told him that the Brotherhood of Railway Clerks had been of personal service in settling cases for me in the past and that I was going to stay with the Brotherhood. I stated to him that I had been employed indirectly by the Southern Pacific Railway and that my rate of pay

now was $4.40 per day after eight years of service, also pointing out to him my experience on the various jobs I had held, and he said that at any time I turned the other way, to come and see him and he would take care of me. I replied to him that I did not think he could be of service to me.

J. G. MILLER.

Subscribed and sworn to before me this 19th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

40 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public, in and for Harris County, Texas, on this date personally appeared L. L. Ellis, who, being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway Company, Texas and Louisiana Lines, in the Local Freight Office at Houston, Texas, as cotton clerk and have been in the service of the Southern Pacific Railway Company in a clerical capacity since December, 1919, under the direct supervision of Mr. J. A. Sanders, as Agent, and Mr. C. E. Armstrong, Assistant Agent. I am a member of the Brotherhood of Railway Clerks and have been a member since 1923. On or about the 10th day of June, 1927, Mr. C. E. Armstrong, Assistant Agent, Houston Freight Station, Houston, Texas, approached me and said in effect the following: The Company has said if they could obtain 51% of the

clerks, they would grant an increase in wages, but would not grant an increase through the Brotherhood of Railway Clerks. I replied I don't think I will get in on it. He made no further remarks.

L. L. ELLIS.

Subscribed and sworn to before me this 19th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

41 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public, in and for Harris County, Texas, on this day personally appeared, B. G. Hudson, who being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway Company, Texas and Louisiana Lines, in the Local Freight Station at Houston, Texas, and have been continuously employed as a clerk since April 1926, under the supervision and direction of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong, as Assistant Agent, and was so employed on or about the 10th day of June, 1927, and that I am now a member of the Brotherhood of Railway Clerks and have been a member since prior to May, 1927.

That on or about June 10th, 1927, during business hours, I was given a petition by Mr. C. E. Armstrong, Assistant Agent, Houston Freight Station, Houston, Texas, to read over and sign. I do not recall the exact wording of the petition but it was to the effect that we the undersigned desired to be represented by a clerk's association and by so doing would be granted an increase in wages.

B. G. HUDSON.

Subscribed and sworn to before me this 20th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

42 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared J. A. Ward, who being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway, Texas and Louisiana Lines, in the local Freight Station, Houston, Texas, as check clerks and have been in the service of the above mentioned railroad in a clerical capacity, since July 1923, under the supervision and direction of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I am now, and have been a member of the Brotherhood of Railway Clerks since prior to May, 1927.

That on or about the 10th day of June, 1927, Mr. C. E. Armstrong, Assistant Agent, Houston Freight Station, came to me during business hours and presented a petition reading substantially as follows: "We, the undersigned do hereby petition the Management to revive the organization known as the Association of Clerical Employees and handle through its officers all greviences [grievances] now pending in preference to officers of the Brotherhood of Railway Clerks" and made a statement to this effect, "I don't know much about this only what

they tell me, but they say that the company has seventy-five thousand dollars ($75,000.00) with which to give the clerks an increase in wages, but they will not give an increase through the Brotherhood of Railway Clerks." I passed the petition back to Mr. Armstrong with the statement that I did not care to sign it.

J. A. WARD.

Subscribed and sworn to before me this 20th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

43 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public, in and for Harris County, Texas, on this day personally appeared, W. H. Smith, who being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway, Texas and Louisiana Lines, in the Local Freight Office as Steno-Clerk, at Houston, Texas, and have been employed by the Southern Pacific Railway in a clerical capacity since December, 1919, under the supervision and direction of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I am a member of the Brotherhood of Railway Clerks and have been a member since prior to May 1927.

That on or about July 7th, 1927, during business hours, Mr. J. C. McDaniels, Chief Clerk at Englewood Yards of the Southern Pacific Railway, met me in the Houston Freight Office, and summoned me to the Agents office, stating that he and Mr. Derrington, Chief Clerk to the Superintendent of Terminals, wanted to see me

on matters of importance. After being introduced to Mr. Derrington, he made a record of my name and initials. He asked me if I was a member of the Brotherhood of Railway Clerks. I replied that I was. The above questions were asked of myself, Mr. Miller, (Initials to me unknown) Mr. O. E. O'Farrell, Sr. and Mr. A. Wilson. Mr. Wilson upon being asked the above question replied that he was not a member of the Brotherhood, whereupon Mr. Derrington stated in effect as follows, You may as well not belong because after tomorrow there will be no B. of R. C. He then explained that he was in a position to know that the company would not grant an increase in wages through the organization known as the B. of R. C., but did know that the company would grant an increase in wages through the organization that he and Mr. McDaniels were sponsoring, further stating that we were entitled to a substantial increase. He then presented a petition reading as follows, "We, the undersigned clerical employees of the Terminal Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as "The Association of Clerical Employees—Southern Pacific Lines in Louisiana and Texas" and do hereby petition the Management of these lines to permit us to take such steps as are necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the Management through this proposed organization. We desire Mr. J. C. McDaniels as our local representative. "I declined to sign the petition. He stated that if fifty one percent of the employees signed this petition the increase in pay was sure to come.

W. H. SMITH.

Subscribed and sworn to before me this 20th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public in & for Harris Co., Tex.

44 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared, J. D. Guidry, who being .. me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway Texas and Louisiana Lines, in the Local Freight Office at Houston, Texas, as timekeeper, and have been employed in a clerical capacity by the Southern Pacific since September 1924, under the supervision and direction of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I am a member of the Brotherhood of Railway Clerks and have been a member since prior to May, 1927.

That on or about June 10th, 1927, Mr. C. E. Armstrong, Assistant Agent, Houston Freight Station, Houston, Texas, approached me with a petition which I glanced over but did not read closely enough to remember the wording of. He said in effect that the Management has seventy five thousand dollars ($75,000.00) with which to give us an increase in wages provided 52% of the clerks signatures were secured, and that no increase would be granted through the Brotherhood of Railway Clerks. I asked him why the Management had

not offered that proposition before the clerks filed a request for an increase. He answered that he was not open for argument, and I then declined to sign the petition, saying I would wait and see the out come.

J. D. GUIDRY.

Subscribed and sworn to before me this 20th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

45 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared J. D. Guidry, who being by me duly sworn, upon oath says:

That I am employed by the Southern Pacific Railway Company, Texas and Louisiana Lines, in the Local Freight Office at Houston, Texas, as timekeeper, and have been employed in a clerical capacity by the Southern Pacific since September, 1924, under the supervision and direction of Mr. J. A. Sanders as Agent and Mr. C. E. Armstrong as Assistant Agent. I am a member of the Brotherhood of Railway Clerks and have been a member since prior to May, 1927.

That on or about the 7th day of July, 1927, I was called into the Agents office, during working hours, by Mr. J. C. McDaniels, Chief Clerk at Englewood Yards, Mr. Derrington, Chief Clerk to the Superintendent of Terminals, Houston, Texas, was in there. He (Mr. Derrington) asked me my name, title of position and whether I was a member of the Brotherhood of Railway

Clerks. He made a record of my replies to the above questions. He then put up the proposition that the management would positively not grant an increase through the Brotherhood, but if we presented a petition with a majority of signatures to the management they would grant an increas.. in wages through the organization that he and Mr. McDaniels were sponsoring. I declined to have anything to do with the proposition.

J. D. GUIDRY.

Subscribed and sworn to before me this 20th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

46 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public, in and for Harris County, Texas, on this day personally appeared, B. Farris, who being by me duly sworn, upon oath says:

On or about the 10th day of June, 1927, Mr. C. E. Armstrong, Assistant Agent, Houston Freight Station, Houston, Texas, approached me and presented a petition the reading of which I do not recall at this time, and asked me how I would like to have a little raise in wages, I told him I would like to have it but did not care to sign his petition, he then told me the only way we could possible get a raise in wages was through signing this petition, that the management would not give us a cent through the B. of R. C. He asked my reason for not signing and I told him that I doubted their sincerity in the matter. This occurred during office hours.

B. FARRIS.

Subscribed and sworn to before me this 18th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

State of Texas,
County of Harris.

Before me F. W. Turner, a Notary Public, in and for Harris County, Texas, on this day personally appeared, J. W. Wade, who being by me duly sworn, upon oath says:

On or about the 10th day of June, 1927, Mr. C. E. Armstrong, Assistant Agent, Houston Freight Station, Houston, Texas, approached me with a petition, while I was checking freight out of a car, I told him before reading it that I was not interested, however, Mr. Armstrong went on to explain that he understood the Management had seventy five thousand dollars ($75,000.00) that they would divide among the railway clerks in Texas and Louisiana, that they would not grant a raise through the Brotherhood of Railway Clerks. I passed the petition back to him and told him again that I would not be interested.

J. W. WADE.

Subscribed and sworn to before me this 18th day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public, in and for Harris County, Texas.

47 State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared, A. B. Nias, who being by me duly sworn, upon oath says:

On or about the 10th day of June, 1927, Mr. C. E. Armstrong Assistant Agent, Houston Freight Station, Houston, Texas, approached me with a petition which I did not read, and he stated that he had been advised or informed that if he secured the majority of clerical employees on this petition that the Management had Seventy-Five Thousand Dollars ($75,000.00) for us and he understood that they would not give one nickle through the Brotherhood of Railway Clerks.

A. B. NIAS.

Subscribed and sworn to before me this 18th day of July, A. D. 1927.

F. W. TURNER,
Notary Public, in and for
(Seal) Harris County, Texas.

State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared, A. B. Nias, who being by me duly sworn, upon oath says:

On or about the 7th day of July, 1927, I was informed that I was wanted in the Agents office and upon entering the office I was introduced through J. C. McDaniel,

Chief Clerk at Englewood Yards. to Mr. Derrington (Initials to me unknown) who hold the position as Chief Clerk to Superintendent of Terminals Mr. E. A. O'Donnell who asked me my name, and whether or not I was a member of the Brotherhood of Railway Clerks. In his conversation with me he said substantially that, he was in a position to know that we would not receive an increase in wages through the Brotherhood of Railway Clerks.

A. B. NAS.

Subscribed and sworn to before me this 18th day of July, A. D. 1927.

F. W. TURNER,
Notary Public, in and for
Harris County, Texas.

(Seal)

48 State of Texas,
County of Dallas.

Before me, Maud A. Burnette, a Notary Public, in and for Dallas County, Texas, on this day personally appeared W. R. Turk, who being duly sworn upon oath says:

My name is W. R. Turk, I am employed as Car Clerk, in the Dallas Local Freight Office, of the Southern Pacific Lines. My position comes within the scope of the agreement between the Brotherhood of Railway Clerks, and the Southern Pacific Lines in Texas and Louisiana.

Mr. George H. Gould, is Assistant Agent, for the Southern Pacific Lines in the Dallas Local Freight office. Mr. P. C. Gebhart, is Agent for the Southern Pacific Lines, in their Dallas local freight office. Mr. F. C.

Ehlinger, is Chief Clerk to the Division Superintendent of the Dallas Division, of the Southern Pacific Lines. As an employee and in my capacity, as Car Clerk, I am subordinate to Messrs. Gould, Gebhart and Ehlinger.

On or about June 5th, 1927, I was told by Clerk W. R. Winn, that I was wanted on the carpet in Agent's office. I went into the Agent's Office alone and there met Agent Gebhart and Chief Clerk Ehlinger. Gebhart greeted me with a statement substantially as follows:

"Turk, you remember in 1923, there was a movement to organize a Clerical Employees Association on these lines. We are now trying to organize a similar organization and would like to know if you will sign up?" Mr. Ehlinger thereupon stated, that before going any further he desired to state that he had every reason to believe that this would be the best movement clerks had ever made. He also stated that the management on several occasions had stated flatly that they would not give a raise to clerk's, as long as they were represented by the Brotherhood of Railway Clerks, unless forced to do so and that then, it would not be for more than two or three cents per hour. On the other hand he stated that he had been led to believe that we could readily get more than three cents per hour thru the Clerical Employees Association. I told them that I did not feel justified in signing their petition, as I had always favored the Brotherhood of Railway Clerks, and looked to them for betterment of working conditions and wages. Mr. Ehlinger, then asked me what benefits I had ever derived from the Brotherhood of Railway Clerks. I told him that we had received the 8-hour day, vacations, and increases in salaries. Mr. Ehlinger then asked me, if I thought it would be possible for me to get a vacation if Gebhart opposed it. I replied

that I did not know. Mr. Ehlinger then asked me, if I thought that we could get more money thru the Brotherhood of Railway Clerks than we could thru the Clerical Association since the management had stated that they would give nothing at all thru the Brotherhood of Railway Clerks unless forced to do so. I replied that I certainly did. The conversation lasted perhaps twenty or twenty-five minutes, during which time, Mr. Gebhart and Mr. Ehlinger discussed the matter with me frankly, to the end that they might induce me to sign the petition which they had presented to me.

W. R. TURK.

Subscribed and sworn to before me this the 19th day of July, A. D. 1927.

MAUD BURNETTE,
Notary Public, Dallas Co., Texas.

(Seal)

49 State of Texas,
County of Dallas.

Before me, Maud A. Burnette, a Notary Public, in and for Dallas County, Texas, on this day personally appeared R. H. Collins, who being duly sworn, upon oath says:

My name is R. H. Collins, I am employed as Chief Accountant in the Dallas Local Freight Office, of the Southern Pacific Lines. My position comes within the scope of the Agreement between the Brotherhood of Railway Clerks, and the Southern Pacific Lines in Texas and Louisiana.

Mr. P. C. Gebhart is Agent for the Southern Pacific Lines in the Dallas Local Freight Office. Mr. F. C. Ehlinger, is Chief Clerk to the Division Superintendent of the Dallas Division, of the Southern Pacific Lines. As an employee and in my capacity, as Station Accountant I am subordinate to Messrs. Gebhart and Ehlinger.

On or about June 5th, 1927, Clerk E. J. Schafer, told W. E. Valentine and myself to report to Mr. Gebhart in his office. We went into the Agent's office and met Chief Clerk Ehlinger, and Agent Gebhart. Mr. Ehlinger stated that he wanted to talk to us about this raise. He presented a petition for us to sign to the effect that we desired to renounce representation by the Brotherhood of Railway Clerks and support the Clerical Employees Association; with the request that we sign. In his conversation, he attempted to persuade us to sign the petition. As an inducement, he stated that he was in a position to know that the Company would grant a greater pay increase thru the Association than could be obtained by the Brotherhood of Railway Clerks. During the conversation, Mr. Gebhart asked Mr. Valentine, if he had ever misled him or had ever given him bad advice and suggested that it was to our interest to take his advice in this instance and sign the petition presented. The conversation lasted perhaps ten or fifteen minutes, during which time, the plain intent of their statements was to the effect that they desired to influence us into signing the petition, which had been presented.

R. H. COLLINS.

Subscribed and sworn to before me this the 19th day of July, A. D. 1927.

MAUD BURNETTE,
(Seal) Notary Public, Dallas Co., Texas.

50 My name is R. E. Stotzer. I am employed by the Southern Pacific Railway Company at Seguin, Texas, as Rate Clerk in the Local Freight Office. I have been in the Employment of the Southern Pacific Railway Co. since October, 1919.

I am a member of the Brotherhood of Railway Clerks.

On or about the twentyth day of June, 1927, Mr. F. H. Bednark, Assistant Superintendent of the Southern Pacific Lines on the Houston Division in company with Mr. J. A. Pryor, supervisory Agent of the Southern Pacific Lines came in the local freight office at Seguin, Texas, where I was on duty. The Agent Mr. B. F. Moore, not being in, I asked Mr. Bednark if there was anything I could do for him, he stated he was looking for Mr. Moore.

Mr. Bednark and Mr. Pryor then left for the passenger station and about thirty minutes later Mr. B. F. Moore, Agent for the Southern Pacific Lines at Seguin, Texas, and my immediate superior, came to the Local Freight office, and submitted to the other clerks and myself a petition copy of which is attached hereto and stated to me and other other employees in the office, in substance, which follows:

That he was talking as the personal representative of Mr. Bednark and that he wished to get each of us to sign the petition. The other clerks and myself told him that we did not care to sign the petition.

Mr. Moore left and in a few minutes called me on telephone and told me that Mr. Bednark wanted to talk to me at the passenger station. I immediately left the Freight Office and met Mr. Bednark at the Passenger Station where he engaged me in conversation for about one hour, the purpose and intent of which was to get me to sign a petition to create a duel organization of the Brotherhood of Railway Clerks and to denounce my membership in the Brotherhood of Railway Clerks.

Among other things Mr. Bednark stated in substance that the Brotherhood of Railway Clerks were not getting us anywhere nor were they getting us anything and the new Organization would deal direct with the Manage-

ment instead of the Clerks dealing with the Management through Harper or Walker who were only feathering their own nest and did not care anything about us. He further stated that if I did not join the new organization I was not loyal to the Company, to which I replied that I did not believe there was a man in the Local Freight Office who was not Loyal enough to fight for the Company.

I also stated that if there was anything I could do for him personally I would gladly do it, but that we did not care to sign the petition which he requested us to sign.

R. E. STOTZER.

Subscribed and sworn to before me, an authorized Notary Public of DeWitt County, on the 19th day of July, 1927, the above named person, R. E. Stotzer, who is personally known to me and says the same is a correct statement of the above conversation in regard to Brotherhood of Railway Clerks.

W. C. TILLERY,
(Seal) Notary Public of DeWitt County, Texas.

My term expires June 1, 1929.

51

June ...., 1927.

The undersigned clerical & Station service employees are employed on the SP Lines in Texas & La. .....Division and we hereby submit this as our declaration that we do not wish to be Represented by the Origa of Brothe Hood of Ry & Stm. Ship Clerks.

It is our desire to select a committee of our own choice to handle our affairs and we desire to deal direct with the management thru such committee .....

We hereby designate .....as our representative for further handling of this matter.

52 Brotherhood of Railway and Steamship Clerks Freight Handlers, Express and Station Employees.

System Board of Adjustment.
Southern Pacific Lines in Texas & Louisiana.

Jno. W. Walker, Gen. Sec.-Treas,
211 Moore Building,
San Antonio, Texas.

R. W. Harper, General Chairman,
211 Moore Building.
San Antonio, Texas.

Mr. A. D. Mins.
Superintndent, T. & N. O.,
San Antonio, Texas.

San Antonio, Texas, July 7th, 1927.

Dear Sir:

Since the date on which mediation of our wage case was begun in Houston there has come to our notice an activity on the part of certain employees of the Houston Division, having for its apparent purpose the formation of a dual clerks' organization.

The clerical employees of this division, upon learning that the Brotherhood's right to represent them was being challenged, reaffirmed their desire to be represented by the Brotherhood of Railway Clerks, through the medium of individual questionnaires to which were affixed the signatures of more than 75 per cent of the clerical employes on this Division.

In view of such a concerted expression from the clerical employees, this Committee of course entertains no alarm with regard to any matter of representation. There has persisted, however, a rumor to the effect that

the management of these lines are fostering the dual organization and that some division officials are actively promoting same.

Our committee has directed attention to the impropriety of any such action on the part of the management, in view of the provisions of the Railway Labor Act, which guarantees to the employes the right of selecting representation without influence or coercion on the part of the carrier. We should be glad, for the sake of harmony to definitely set this rumor at rest, and should therefore thank you to confirm our understanding that the attitude of our division officials in a question of this kind would be one of strict neutrality.

Yours truly,

EDW. J. FOY,

Division Chairman.

I hereby certify that the foregoing is a true and correct copy of the original letter dated July 7, 1927, addressed to Mr. A. D. Mims, Superintendent, Houston Division, T. & N. O. Ry., San Antonio, Texas, and to which no reply has been received to this date.

EDW. J. FOY.

State of Texas,
County of Bexar.

Subscribed and sworn to before me a Notary Public in and for the above state and county, this 19th day of July, 1927.

(Seal) P. D. STARR.

53 Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

System Board of Adjustment.
Southern Pacific Lines in Texas & Louisiana.

Jno. W. Walker, Gen. Sec.-Treas,
211 Moore Building,
San Antonio, Texas.

R. W. Harper, General Chairman,
211 Moore Building.
San Antonio, Texas.

State of Texas,
County of Harris.

Before me, F. W. Turner, a Notary Public in and for Harris County, Texas, on this day personally appeared John W. Walker, who being by me duly sworn upon oath says:

I am an employee of the Southern Pacific Railway Company, holding seniority rights in the Local Freight Office at San Antonio, Texas, under the jurisdiction of W. W. Reed, Agent, at San Antonio and A. D. Mims, Superintendent of the Houston Division of the Southern Pacific Railway Co. and located at San Antonio. I am at the present time and have been since May, 1925, on leave of absence granted to me by Superintendent Mims, for the purpose of representing the Clerical and Station employes on the Southern Pacific Lines in Texas and Louisiana in the Capacity of General Secretary-Treasurer, and Asst. to the General Chairman of the Brotherhood of Railway Clerks. As an employee of these lines I am under the jurisdiction of the officials of the Southern Pacific Lines in Texas and Louisiana, and am there-

fore entitled to all pass privileges the same as if I were in active service, and this privilege has never heretofore been denied.

On or about July 7th, 1927, I made a request through my immediate superior, Agent Reed at San Antonio, for a round trip pass for my two daughters from San Antonio to Mexia and return. On or about July 13th, 1927, I called in person on Agent Reed at his office and inquired about this transportation. Agent Reed informed me that he understood it had been denied by the General Office in Houston, due to some trouble that I had with the officials. I asked him to take up with the Superintendent and ascertain just why the request had been declined. Later on the same date I phoned Agent Reed for this information and he advised me that the Superintendents Office informed him that the transportation would not be issued and that I would have to take up direct with the Superintendents office if I cared to know why it had been declined. I immediately called the Superintendents office and was connected with the chief clerk, Mr. Wallace Turberville and the following conversation took place. Quoted in substance.

Walker: Mr. Turberville, the pass that I requested last week has been declined and Agent Reed referred me to you for a reason.

Turberville: Yes, it was declined in Houston.

Walker: Was it declined by Mr. Waid's office?

Turberville: Yes.

Walker: Was any reason given?

Turberville: Well—the only reason given was that transportation was only furnished to employees for loyal and faithful service.

Walker: All right—I thank you Mr. Turberville.

54 I have never been notified by Agent Reed, Superintendent Mims or any other official of the Southern Pacific Railway Company that I was considered by them as not being loyal and faithful to the Southern Pacific, and no general or direct charges of this nature have ever been brought against me.

My seniority with the Southern Pacific Lines dates from March 16th, 1917, as shown on current seniority roster.

JNO. W. WALKER.

Subscribed and sworn to before me this 21st day of July, A. D. 1927.

F. W. TURNER,
(Seal) Notary Public in and for Harris County, Texas.

55 SCHEDULE "C".

United States Board of Mediation.
Washington.

Samuel E. Winslow, Chairman,
G. Wallace W. Hanger,
Edwin P. Morrow,
Pat M. Neff,
John Williams,
John Marrinan, Secretary.

Houston, Texas, June 15, 1927.

Mr. Richard P. Dee,
Vice Grand President,
Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees.
Houston, Texas.

Dear Sir:

As you know I have been in Houston since June 2nd handling jointly five railroad mediation cases as pro-

vided by the law, creating the United States Mediation Board. Two of these cases have been with the Missouri Pacific Lines, and three with the Southern Pacific System.

Up to this time I have not been successful in terminating any of these cases.

This is to advise you that the case in which you are interested, together with the other four cases will all be held in abeyance within the jurisdiction of the Mediation Board, until after the annual meeting of the Mediation Board, which commences in the City of Washington, Monday, June 27th. Shortly after the adjournment of the annual Board Meeting, I shall return to Houston to resume my mediation work in connection with your case, with the hope that within a short time a satisfactory and amicable adjustment can be had.

Will advise you several days in advance of the renewal of the mediation of your case.

With every good wish to you and yours during the "recess hour," I am,

Yours cordially,

(Signed) PAT M. NEFF, Member,
U. S. Board of Mediation.

Indorsements: In the District Court of the United States for the Southern District of Texas, Houston Division—Equity No. 314—Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana and H. W. Harper, etc., Complainants vs. Texas and New Orleans Railroad Company, et al., Defendants—Bill of Complaint and order thereon—Filed July 25, 1927. L. C. Masterson, Clerk, by M. Anderson, Deputy.

56 RULE TO SHOW CAUSE.

Issued July 25, 1927.

Returned & Filed July 26, 1927.

(Title Omitted.)

The President of the United States of America:
To Texas and New Orleans Railroad Company,
Greeting:

Whereas, on July 25, 1927, a Bill in Equity for temporary and permanent injunction was filed in this Court by Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, and H. W. Harper, General Chairman of the System Board of Adjustment of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana individually and as the actual and legally designated and elected representatives of the railway clerks in the employ of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana, except General Office Employees et al, Complainants, against Texas and New Orleans Railroad Company, A. D. McDaonald —H. M. Lull—G. S. Waid—R. C. Watkins—J. G. Torian —F. H. Bednark—J. A. Pryor, C. E. Armstrong, P. C. Gebhart, F. C. Ehlinger, J. C. McDaniels, C. W. Derrington and the Division Superintendents, Assistant Division Superintendents, trainmasters, yardmasters, special agents and other officers, agents and employees of said Texas & New Orleans Railroad Company exercising directory and supervisory powers over the railway clerks of said Texas & New Orleans Railroad Company in the States of Texas and Louisiana, and other employees of said railroad company, defendants; and

Whereas, an order was made on said Bill by the Honorable J. C. Hutcheson, Jr., Judge of the District Court of the United States for the Southern District of Texas, in words and figures as follows, to-wit:

57 "7/25/27. Upon consideration of the within petition it is ordered that a rule issue to Defendant Texas & N. O. R. R. Co. to appear before me on Thursday, July 28, 1927, at 10 A. M. in Chambers to show cause why the temporary injunction prayed for should not issue.

J. C. HUTCHESON, JR., Judge."

Wherefore, you are hereby notified to appear in Chambers of said Court at Houston, on Thursday, July 28, 1927 at 10 A. M. to show cause, if any you can, why the temporary injunction prayed for should not issue.

Herein fail not:

Witness the Honorable J. C. Hutcheson, Jr., Judge of said Court and the Seal of the District Court of the United States for the Southern District of Texas, at Houston, this 25th day of July, A. D. 1927.

L. C. MASTERSON, Clerk,
(Seal) By J. L. SEXTON, Deputy.

Marshal's Return.—Entered Docket.

Received this writ at Houston, Texas, on the 25th day of July, 1927, and executed at Houston, Texas, on the 25th day of July, 1927, by delivering to H. M. Lull, Executive Vice-President of the Southern Pacific Lines a true copy.

R. A. HARVIN,
U. S. Marshal,
By MALLIE H. SHARP, Deputy.

58 OPINION OF THE COURT.

Filed August 2, 1927.

(Title Omitted.)

Opinion delivered Orally at the Conclusion of the Hearing.

This is an application for temporary injunction brought by way of class suit, H. W. Harper appearing as representative of the class, the class being members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees of the Southern Pacific Lines in Texas and Louisiana and Railway and Steamship Clerks, Freight Handlers and so forth, individually, against the Texas & New Orleans Railway Company, employing railroad clerks whom Harper and the Brotherhood purport to represent and against such officers of the company named and certain individuals stated to be officers of the company, for an injunction to prevent the defendants, upon allegations that they should be prevented from interfering, influencing or coercing either the self organization or the designation of representatives by the railway and steamship clerks, freight handlers and so forth, as provided in the Act of the 69th Congress entitled "An Act to Provide for the Prompt Disposition of Disputes between the Carriers and their Employees and for other purposes."

Whether Congress has the power, apart from a mediation Act, such as the one in question, to pass legislation affecting the right of an employer to freely influence or interfere with the organization, or lack of organization of his employees, is not the question before me.

Neither is the question whether the railroad company might discharge the employee or the employee refuse to work for the railroad company, merely because
59 of questions of organization among the employees. The question simply here, is, whether under the Act passed for the purpose of settling disputes between carriers and their employees, which Act parties to this litigation seem to have, as far as the record shows, acted upon and adopted, Congress can do what it has done to insure that in the settlement of these disputes each side shall be represented by those of its own selection, uninfluenced by the action of the other.

In short Congress recognizing that a primary requisite of settlement of a dispute is the truly representative character of those who bring it about, has determined to and I think has legally declared conditions under which these relations, if they are maintained and these disputes, if they are adjusted, are to be adjusted.

Nor do I think it doubtful that while no property right in the sense of a definite and tangible thing is involved, that the right to work and to continue to work under arrangements which will insure fair wages and fair working conditions is a proper right which Congress can legislate about the preservation of, and the Court has the power by appropriate order to protect.

This, as to the employees and the company, insofar as the bill may be construed as an attempt to enjoin individuals acting as individuals, either of the class which the plaintiff claims to represent, or outside of that class, the Act does not attempt to, nor could it in my opinion, reach their action. In fact the Act clearly recognizes that employees should have the right to organize in the manner that they please, so long as they

are not influenced and coerced by their employer, and that the employer may select his representatives as he pleases without influence and coercion.

In so far therefore, as the bill seeks or might have the effect to strike at the organization or formation of the association or other Union, the description of which and the activity of which are largely set out in the bill, certainly the bill cannot reach this, nor can
60 or should, the Court enjoin the activities of the men in forming, fostering and promoting this Union. Whether the Union is, or is not, favored by the corporation, nothing in the Act either looks to or attemps to control the question of maintaining one Union against the other in the interest either of the company or against the company.

Insofar then as the bill by naming Ehlinger, McDaniel and Derrington seeks to enjoin these men from their activities as organizers of or sponsors or promoters of another union, it states no cause of action against them. They have the right, if, as upon the affidavits I take it they are, they are clerks and are entitled to organize and maintain a union. Of course, if these men are company officials, if it should be later determined that they are not persons who have any right to organize or promote unions and it should plainly appear that their connection with " union is merely specious and plausible and not real and sound then a different rule would result, but as to these persons named in the bill as defendants and any other persons who are employed by the railroad in the capacity of railway or steamship clerk, freight handler, express or station employee, who desire to or are endeavoring to, organize a union, they have a full and complete right to do it as the plaintiffs have to maintain, organize and promote theirs. The prayer of the bill as to these men will be denied.

Similar in form, but not the same in substance, the prayer of the bill as to the persons named O'Donnell and others will be denied because personally the Act gives the Court no jurisdiction over them and their activities as individuals disassociated from their positions as officers are not the subject of Court review. In substance however, the injunction which the Court has concluded to grant against the railroad will in its terms and operation cover them, because it seems to me that in this character of Act the principles of apparent authority are to apply as well as those of express authority, and since in ordinary cases of responsibility sought to be imposed upon a principal through the act of an agent, the principal cannot be heard to deny the authority of the agent where he has clothed him with
61 the indicia of authority and has held him out as having the authority by the same species of estoppel applicable to hold the principal there, the principal should be held here. It would be sticking in the bark to say that these men can so disassociate themselves from the company with which they work in their relations with their employees as to actively foment, foster, interfere or influence the formation of a union and be acting individually when they are doing it on the company's time, on the company's pay and under the aegis of the company's authority, whether the authority to form the union is actually extended to them or not. So that it is not necessary in the view I take of the matter to at all find that "the officials" of the company are directly authorizing or encouraging these subordinate officials, and when I say "the officials" I mean the primary officials, in doing what they do.

It is sufficient that they clothed with the apparent authority and acting in the course of the company's business and apparently in its interest, and this is

strengthened by the position of the company before the Court in this hearing, that it is interested in this association, it is too close a refinement to say that a Court ought to be put to it to figure out whether these employees so acting are actually authorized, when as a matter of fact the same result is accomplished by their being permitted to do it, and their actions in the doing of it ratified. So that I think it clear from the position of the defendant itself and particularly clear upon the affidavits which have to do with the holding out of the $75,000.00 and the affidavits which have to do with Armstrong's actions, but apart from that, from the general position of Mr. Torian's affidavit that these officers will continue to do this thing unless enjoined, that it is plain that in the sense which the Statute sought to avoid the mischief is taking place, and that the company is, to what extent, I am not now passing upon, but to some extent interfering with or influencing the self-organization of these employees.

As to the designation of a representative by the employees I do not think there is any proof that they are undertaking to do so.

Something was said in the bill about the company not permitting the representatives of the Brotherhood to appear in the mediation or to represent the clerks, and that the company was going to permit only persons from this other union. There is no proof of that before me as to what has been done about the designation of representatives, but I think the proof is sufficient to show that there has been enough activity of company officers, whether upon real or apparent authority is immaterial, to bring about a condition of company influence on self organization within the provisions of the Act.

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As to the prayers of the petition, which seek to enjoin the railroad company from abridging or violating the contract of employment, I have no evidence before me, either of a contract of employment with plaintiffs as a class, which is sought to be violated, or which is about to be violated or any evidence that anybody is about to violate it. So that it becomes academic, and not necessary to pass upon at this time but I am inclined to think that except as an incident of or an illustration, or example of interference, influence or coercion, it has no part in this bill anyway and I will not issue an injunction upon that phase of the bill.

There being no evidence at all that any discrimination is made in the employment or retention of any of these people because of membership.

Then the third prayer of the bill is to restrain the defendants from using or attempting to use any purported right or authority to appear for or act for, or represent the 1700 clerical employees. I do not understand there is any evidence that the defendant is trying to do that. If there is, I will later enjoin them from it.

For the present I don't think that is acute, and I don't think it is necessary. I think that the injunction ought to go as a result of what I have said, I think there is sufficient evidence to justify the Court in the belief that activities have been had on the part of some of the officials of the railroad company which have the effect of interfering with or influencing self-organization and that a temporary injunction should be granted until the further orders of this Court enjoining and restraining the defendant railway company, its servants and agents, from in any way or manner interfering with, influencing, intimidating or coerc-

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ing plaintiffs or any of the employees represented by plaintiffs as a class, with respect to their own free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding disputes between the employees and the defendant railroad company and as employees to their free and untrammeled right to self-organization. Nothing in this injunction shall be considered authority to prevent any employee of the railroad in the class referred to from organizing as many unions as he wants to in any way he wants to, with the assistance and aid of his fellow employees in any way and to any extent that he wants to, nor on the other hand to permit the officers of the company from, while such officers, attempting to influence or interfere with such formation upon the pretext that they are acting individually and not as company representatives.

J. C. HUTCHESON, JR.,
Judge.

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64 ORDER FOR TEMPORARY INJUNCTION.

Filed August 3, 1927.

(Title Omitted.)

The above entitled and numbered cause coming on to be heard on the 28th and 29th days of July, 1927, on complainants' prayer for a temporary injunction and on the rule to show cause, and all parties having appeared by counsel and the Court having heard the pleadings, the evidence, and argument of counsel, on this the 29th day of July, 1927, orders and decrees that until the further order of the Court

(1) That the injunctions prayed for against the defendants F. C. Ehlinger, J. C. McDaniel and C. W. Derrington, as individuals, be, and the same hereby are, denied;

(2) That the injunctions prayed for against the defendants A. D. McDonald, R. C. Watkins, P. C. Gebhart, F. H. Bednark, J. A. Pryor, H. M. Lull, G. S. Waid, J. G. Torian and C. E. Armstrong, as individuals, be, and the same hereby are, denied;

(3) That the defendant Texas and New Orleans Railroad Company (a corporation and common carrier owning, leasing, and operating certain railroads throughout the States of Texas and Louisiana), its officers, servants, and agents are hereby enjoined and restrained from in any way or manner interfering with, influencing, intimidating, or coercing plaintiffs or any of the approximately seventeen hundred clerical employees (and being the clerical employees described and referred to in
65 plaintiffs' petition, which includes approximately seventeen hundred railroad clerks in the employ of the defendant Railroad Company on its lines throughout the States of Texas and Louisiana, except such clerical employees as are employed and engaged in its general office in the City of Houston, Texas, and in its general office in the City of New Orleans, Louisiana), with respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant Railroad Company; and further enjoining and restraining said defendant Railroad Company, its officers, servants, and agents from in any way or manner interfering with,

influencing, intimidating, or coercing plaintiffs or any of said clerical employees herein referred to of their free and untrammeled right of self-organization.

Nothing in this injunction shall be considered or construed as authority to prevent any employee of said defendant Railroad Company, in the class referred to, from organizing, joining, promoting, or fostering as many unions as he or they (meaning such employees in the class referred to) may desire, and in any way which he or they may desire, and with the assistance and aid of any of his fellow employees in any way and to any extent that said fellow employees (in the class referred to) may desire; nor shall anything in this injunction be considered or construed as authority or permission for any officer or agent of said company, or any employee, acting for or on behalf of the defendant Railroad Company, attempting to influence or to interfere with said selection or designation of their said representatives, or their right to self-organization as herein referred to, upon any pretext that they are acting individually and not as representatives of said defendant corporation.

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(4) All other preliminary or temporary relief prayed for in complainants' bill is at this time refused without prejudice to any rights to any part of such other relief as complainants might later show themselves entitled to.

(5) All parties consenting, no bond is required.

Dated at Houston, Texas, on this the 29th day of July, A. D. 1927.

J. C. HUTCHESON, JR.,
Judge.

67 MOTION TO STRIKE OUT AND ANSWER OF TEXAS AND NEW ORLEANS RAILROAD COMPANY.

Filed Aug. 13, 1927.

First two pages being Motion to strike out parts of Bill of Complaint—not copied, by direction of counsel.

68 (Title Omitted.)

Comes now Texas and New Orleans Railroad Company, respondent in the above entitled and numbered cause and files this, its answer, subject to the foregoing motion to strike out certain parts of said bill of complaint and for answer to said bill of complaint represents and shows to the Court:

I.

It denies that the so-called plaintiff "Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana" is a voluntary association, entitled to bring this suit and alleges, on information and belief that there is no such association, though there is a voluntary association known as "Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which, defendant is informed and believes and so alleges, is a so-called national association, having members and local lodges on and consisting in part of clerical employees of respondent.

Respondent denies that a majority of the clerical employees, other than general office employees of respondent are members of the said Brotherhood or that the

said Brotherhood has written authorizations from a majority of said employees, authorizing and empowering it or its General Chairman, to represent them in the matters referred to in said bill of complaint.

With respect to the other allegations of Paragraph or Section I of the bill of complaint respondent is without information sufficient to form a belief with respect to the truth or falsity of same and demands proof thereof.

69 II.

Respondent admits that it is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business in the City of Houston, in said State, and that it owns and operates and leases and operates various lines of railroad within and between the States of Texas and Louisiana and that it is a common carrier of freight and passengers for hire. It admits that the individual respondents named, except the respondents F. C. Ehlinger, J. C. McDaniel and C. W. Derrington, are officers and agents of respondent. It alleges that said respondents Ehlinger, Derrington and McDaniel are clerical employees of respondent and not officers or agents. It denies that the said Ehlinger, McDaniel and Derrington exercise supervisory or directory power of authority over respondents' employees, but it admits that the other individual respondents do exercise such power and authority, but in their capacity as officers and agents of respondent and not in their individual capacity.

III.

Respondent is without information sufficient to form a belief with respect to the allegations of Paragraph III of the bill of complaint and demands proof of same.

IV.

Respondent admits that it has executed with the complainant Harper certain memoranda evidencing the fact that certain rules and working conditions have been from time to time and are, in effect between respondent and its clerical employees, other than general office employees and that said memoranda were signed on or about the dates alleged in the bill of complaint. It alleges that it has executed no such agreement except as required to do so by certain decisions of the United States Railroad Labor Board and it expressly denies that the Brotherhood of Railway and Steamship Clerks, represents or has represented, a majority of its clerical employees, of the class described in the bill of complaint.

It admits that the plaintiff H. W. Harper, as Chairman of the Brotherhood of Railway Clerks, has re-
70 quested and demanded certain increases in pay of respondent and that the same have been denied.

It admits that on or about November 24, 1926, one J. W. Walsh, an employee of the United States Board of Mediation, undertook to conduct mediation proceedings between it and the said Brotherhood and that it declined to recognize his authority. It alleges that said declination was on the ground that said Board of Mediation had not the power to delegate its authorities and functions and that its said refusal has been accepted as just and proper. It admits that Hon. Pat Neff, a member of the United States Board of Mediation, has undertaken to mediate in the matter referred to and that said mediation has not resulted in an agreement. It is without information sufficient to form a belief with

respect to any of the other matters alleged by complainant in Paragraph or Section IV of the bill of complaint and demands proof of same.

V.

It denies that the plaintiff Brotherhood or the plaintiff H. W. Harper represents or is authorized to represent all or a majority of its clerical employees of the class referred to in the bill of complaint.

It admits that there has been formed among its clerical employees an organization known as "Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana" but it denies that it inspired or instigated the formation of the same. It admits that it has, in a lawful manner, encouraged the same and it admits that it recognizes the same as representing a majority of its said clerical employees. It denies that it or its officers, agents or employees, acting as such, have undertaking or attempted, directly or indirectly, to interfere with, influence or coerce the clerical employees in the matter of their self-organization or designation of representatives, but it admits that divers of its agents and employees have spoken favorably with respect to said Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. It denies that any threats have been made in the matter whatsoever. It admits that J. G. Torian, Assistant to its Vice President and General Manager, acting as such wrote and transmitted
71 the letters or substantially the letters, set forth in Subdivision or Section V of the bill of complaint and alleges that the representations therein contained are true.

It denies that it, or its officers, selected the defendants J. C. McDaniel, C. W. Derrington, F. C. Ehlinger, or others, to mannge or direct the affairs, or become officers of said Association of Clerical Employees Southern Pacific Lines in Texas and Louisiana, and alleges that they have been selected by their fellow employees in accordance with the rules, regulations and by-laws of said organization. It denies that said Association is a puppet or in any sense a representative or tool of the respondent, and it denies each and every allegation of Section or Subdivision V of the Bill of Complaint except as herein expressly admitted.

VI.

It denies the allegations of Paragraph VI of the bill of complaint and particularly denies any and all violation of the provisions of the Railway Labor Act (44 Statutes at Large 577) or Section 2 thereof. It expressly denies that it has discriminated in any respect against members or officers of the Brotherhood of Railway Clerks as such or because of their being members or officers of said organization.

VII.

It denies the allegations of Paragraph VII of the bill of complaint and particularly denies that the complainants or those it claims to represent, have any property rights which respondent has denied or intends to deny or of which respondent has deprived or intends to deprive them.

VIII.

It denies the allegation of Paragraph VIII of the bill of complaint and especially denies that it has or is, or intends to influence, coerce or intimidate any of its employees in any matters whatsoever or in the matters alleged in the bill of complaint.

IX.

It denies the allegations of Paragraph IX of the bill of complaint. It is without information sufficient to form a belief with respect to the allegations of
72 Paragraph IX of the bill of complaint and demands proof of same, save and except that it alleges that the said Brotherhood of Railway Clerks do not have the authorizations of a majority of its employees to represent them and that it is its purpose and intention to deal only with the representatives of its said employees. It denies that it is making or has made, any endeavor to influence, coerce or intimidate any of its employees.

Premises considered respondent prays that complainants take nothing by this suit and that it go hence without day.

TEXAS AND NEW ORLEANS RAILROAD COMPANY,
By BAKER, BOTTS, PARKER & GARWOOD,
J. H. TALLICHET,
CALVIN B. GARWOOD,
Attorneys.

State of Texas,
County of Harris.

L. H. Cecil, being duly sworn, deposes and says:

I am Assistant to the Executive Vice President of the Texas and Louisiana Lines of Texas and New Orleans Railroad Company and as such, have the knowledge and authority necessary to the making of this affidavit in behalf of said Company; that I have read the foregoing answer, know the contents thereof, and that the matters and things therein alleged are true and as to the matters and things therein alleged on information and belief, affiant believes them to be true.

L. H. CECIL.

Sworn to and subscribed before me on this the 13th day of August, A. D. 1927.

O. G. KEHRER,
(Seal) Notary Public in and for Harris County, Texas.

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73 INFORMATION CHARGING CONTEMPT AND ORDER THEREON FOR RULE TO SHOW CAUSE.

Filed Oct. 22, 1927.

(Title Omitted.)

On motion of John H. Crooker and Carl G. Stearns and on the filing of the information of H. W. Harper charging contempt of Court against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, it is ordered that a rule issue to the said Texas and New Orleans Railroad Com-

pany, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, and each of them to be and appear before this Court on the 4th day of November, A. D. 1927, to show cause, if any they have why they should not be punished for contempt of Court for violation of the temporary injunction heretofore issued by this Court on August 3 1927, in this cause.

J. C. HUTCHESON, JR.,
United States District Judge.

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74 (Title Omitted.)

To the Honorable J. C. Hutcheson, Jr., Judge of said Court:

John H. Crooker and Carl G. Stearns, counsel for Plaintiffs in above styled cause move the Court for a rule against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, to show cause why they should not be punished for a contempt of this Court upon the grounds set forth in the petition or information attached hereto and made a part hereof.

CARL G. STEARNS,
JOHN H. CROOKER.

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75 (Title Omitted.)

To the Honorable J. C. Hutcheson, Jr., Judge of said Court:

Now comes H. W. Harper, General Chairman of the System Board of Adjustment of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, individually and as the actual and legally

designated and elected representatives of the railway clerks in the employ of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana, except general office employees and gives the Court to understand and shows to the Court that on July 25, 1927, there was filed in the office of the Clerk of this Court a certain bill of complaint in the above entitled case which is substantially as follows:

76 Bill of complaint and order thereon, omitted from the printed record, being heretofore copied at page 6.

* * * * * * * *

93 Service of said order to show cause was duly effected on said date of July 25, 1927, upon said Texas and New Orleans Railroad Company by one of the Deputy United States Marshals of this District duly serving a copy thereof upon said H. M. Lull, Executive Vice President of said Texas and New Orleans Railroad Company at his office in the City of Houston, Texas, within this District and Division.

Thereafter, on July 28, 1927, said application for temporary injunction duly came on for hearing before this Court at the Court Rooms thereof in the Federal Building, Houston, Texas, and each and everyone of the defendants mentioned in the aforesaid bill of complaint then and there appeared either in person or by counsel and entered general appearances in said suit and made answer to said bill of complaint. Thereafter this Court after hearing the evidence submitted by the parties to said suit and the arguments of counsel and after due

deliberation and consideration did on August 2, 1927, announce from the bench in open Court in the presence and hearing of said defendants substantially the following opinion, which opinion is on file in the office of the Clerk of this Court:

94 Opinion of the Court and Order granting said Temporary Injunction, omitted from the printed record, being heretofore copied at page 76.

* * * * * * * *

99 That immediately following the granting of said temporary injunction and the entering of said formal order and decree in the minutes of this Court, as aforesaid, the defendants, and each of them, had due, prompt and timely notice thereof, and each and all of said defendants, from and after the 3rd day of August, A. D. 1927, were fully acquainted with the nature, soope and extent of said temporary injunction; that said suit is still pending upon the docket of this Court and said temporary injunction has been continuously, since August 3, 1927, in full force and effect.

That shortly after this Court had announced its decision and opinion and entered its decree with respect to said temporary injunction, the Texas and New Orleans Railroad Company, a corporation, acting through its officers, servants and agents, in that behalf, and especially J. G. Torian, H. M. Lull, G. S. Waid and W. R. Mann, said corporation and said individuals being hereinafter called "Defendants", proceeded forthwith, knowingly, wilfully and with unlawful intent, to ignore, violate, disobey and disregard said temporary injunction, and

said defendants, and each of them, combined, conspired and confederated among themselves and each with divers other officers, servants and agents of said defendant railroad company, to effect the unlawful and improper purpose of interfering with, influencing and coercing their clerical employes with respect to the self organization of said clerical employes, and with respect to the designation of representatives by said clerical employees, under such circumstances and in such manner as to constitute a violation of said temporary injunction. In this connection, the Court is given to understand that said defendants, and each of them, acting pursuant to said conspiracy, from August 4, 1927, continuously
100 down to the filing hereof, have carried on and put into effect a studied course or systematic interference, influence and coercion directed toward its and their clerical employes described in and involved in said pending suit with respect to the self organization of said clerical employes and with respect to the designation by said clerical employes of their representatives to confer with and consider disputes between said carrier defendant and its clerical employes; that among other things done by said defendants during the period and in the manner herein alleged are the following:

I.

On or about August 6, 1927, the defendant J. G. Torian, assistant to vice-president and general manager G. S. Waid of said company, addressed a communication for and on behalf of said defendant corporation to one F. C. Ehlinger, an employe of defendant railroad company holding a responsible and important position and employment under said railroad company at Ennis, Texas, said communication being as follows:

Houston, Texas, August 6, 1927.

Representation Clerical Employes other than General Office Employees:

Mr. F. C. Ehlinger,
General Chairman,
Association of Clerical Employes,
Ennis, Texas.

Dear Sir:

The authorization which your committee hold to represent the clerical employes, other than General Office employes on these Lines, that were presented to me at our conference yesterday as your authority for seeking conference with me have been carefully checked and in view of these authorizations and under Rule 56, Section (a) of the rules promulgated by the Railroad Labor Board, reading as follows:

"Where the term 'dul yaccredited representative' appears in these rules it shall be understood to mean the regularly constituted committee representing the
101 class of employees on the railroad where the controversy arises, or any representative or representatives the employees directly interested may select or designate."

these Lines will recognize your committee as the representatives of the employes directly interested.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

That on or about August 9, 1927, the defendant J. G. Torian, assistant to vice-president and general manager G. S. Waid of said company, addressed a communication for and on behalf of said defendant corporation, trans-

mitting to certain officials of said defendant railroad company a copy of his letter of August 6, 1927, addressed to the said Ehlinger, which said letter of August 9, 1927 is as follows:

Representation Clerical Employees Other than General Office Employees:

Houston, Texas, August 9, 1927.

Mr. C. R. Morrill, Supt., El Paso, Texas.
Mr. A. D. Mims, Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksh, Supt., Houston, Texas.
Mr. E. A. O'Donnell, Supt., Houston, Texas.
Mr. R. M. Glover, Supt., Lafayette, La.
Mr. P. B. Torian, Supt., New Orleans, La.
Mr. B. S. Hollimon, Supt., Ennis, Texas.
Mr. J. H. Walsh, Supt., Austin, Texas.

Mr. J. T. Connor, Supt., T&NO Shops, Houston, Texas.
Mr. J. S. Netherwood, Asst. Supt., MP&E, Algiers, La.
Mr. C. T. Davis, Supt., Creosote Works, Houston, Texas.
Mr. L. B. Wood, General Storekeeper, Houston, Texas.
Mr. Percy Hewett, Supt., Telegraph, Houston, Texas.
Mr. D. H. Lusk, Mgr. Dining Car Dept., Houston, Texas.
Mr. M. H. Bonner, Special Agent, Houston, Texas.

Gentlemen:

For your information and guidance I attach copy of my letter of August 6th addressed to General Chairman Ehlinger of the Association of Clerical Employes advising that these Lines will recognize his committee as the duly accredited representative of the clerical employees of these Lines other than the General Office employes.

Yours truly,

(Signed) J. G. TORIAN,

Asst. to V. P. & G. M.

cc-Mr. G. S. Waid,
Mr. R. C. Warkings,
102 Mr. G. R. Cottingham,
Mr. C. K. Dunlap,
Mr. C. S. Fay,
Mr. L. B. McDonald,
Mr. T. H. Meeks,
Mr. O. C. Castle.

That shortly after the receipt of said letter last referred to by the several superintendents and other officials to whom the same was addressed, said superintendents and other officials caused said letter to be given wide publication among the 1700 clerical employes employed by the defendant railroad company in Texas and Louisiana, and described and referred to in said injunction. In this connection, it is represented to the Court that all, or practically all, of said superintendents and other railroad company officials to whom said letter of August 9, 1927 was addressed, reproduced large numbers of copies of said letter and caused them to be placed upon various bulletin boards and in other public places at and around the stations and offices in which said 1700 clerical employes were engaged in their duties, a copy of the bulletin issued by C. R. Morrill, superintendent of said defendant railroad company at El Paso, being as follows:

Southern Pacific Lines,
In Texas and Louisiana.
Texas and New Orleans Railroad Company.

Office of Superintendent.

El Paso, Texas, Oct. 1, 1927.
OIS

All Concerned:

For your information and guidance attach copy of a letter addressed to General Chairman Ehlinger of the Association of Clerical Employees, by Mr. J. G. Torian, Asst. to Vice-President and General Manager, under date of August 6th, advising that these Lines will recognize his Committee as the duly accredited representatives of the Clerical Employees of these Lines, other than General Office employees.

Please post for the information of all con-
103 cerned.

(Signed) C. R. MORRILL,
Superintendent.

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Cys all Agents:

Messrs. W. R. Mann, W. Bleick, W. S. Ford, D. B. Herbert, J. E. Marshall, S. B. M. Jones, J. H. Knowles, T. S. Stewart, P. H. Lancaster, J. C. Hunt, E. D. Dumas, Roundhouse Foreman, El Paso, Va, SO, DR, Eagle Pass Roadmasters, El Paso, Marfa, Del Rio, Spofford.

That the writing of said letter of August 6, 1927, by the said defendant J. G. Torian to the said Ehlinger and the dissemination of the information therein contained through the letter written by the said defendant J. G. Torian on August 9, 1927, and its further dissemination and distribution among the various subordinates, employees, et cetera, was accomplished by the defendants

under the guise of an official action taken by the said J. G. Torian in connection with the performance of his duties in behalf of said defendant railroad company and under such circumstances that it could be made to appear that said letters, bulletin, et cetera, and the actions represented thereby, were in due course of the railroad company's business as attended to by the said J. G. Torian in good faith; but the Court is given to understand that none of said matters were in fact the good faith or bona fide actions of the said J. G. Torian, and that the writing of said letters and the distribution thereof and the dissemination of the information therein contained was done for the sole purpose of interfering with, influencing and coercing some or all of said 1700 clerical employees with respect to their self-organization, and for the further purpose of interfering with, influencing and coercing some or all of said 1700 clerical employes with respect to the designation of their representative or representatives to act for and in their behalf in connection with disputes between the defendant carrier and said clerical employees. In this con-

104 nection, the Court is further given to understand that a large majority of said 1700 clerical employees in truth and in fact desire the organization known as the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the officers thereof, to act for and on behalf of them (said 1700 clerical employes) with respect to all disputes between the defendant railroad company and its said 1700 clerical employes, and so desiring a large majority of said 1700 clerical employees have designated and authorized said Railroad Brotherhood and its officers to so act for them and to represent them in all of such matters; that said desire on the part of said

clerical employes was and is well known to the defendant railroad company and its officers and agents acting for it in the premises, and that on the hearing in this Court of the application for a temporary injunction hereinabove referred to the defendant J. G. Torian, as well as other officers and agents of the defendant railroad company, and as well as the attorneys of record in that behalf—all heard read the affidavit of John W. Walker, General Secretary-Treasurer of said Railroad Brotherhood, in which said Walker stated under oath that said Brotherhood held the written authorizations of more than 1100 of said 1700 clerical employes, said written authorizations of more than 1100 of said clerical employes having been offered in evidence in this Court upon the hearing of the application for said temporary injunction, and the same having been inspected in open Court by counsel for the defendant railroad company, after which time said written authorizations were and are open to the inspection and examination at any and all times by said defendant railroad company, its officers and agents; that said defendant railroad company, its officers and agents, especially those herein complained of, well knew that a large and unmistakable majority of its said 1700 clerical employes so desired to be represented by said Railroad Brotherhood and its officers and representatives and well
105 knew that said Railroad Brotherhood and its officers and representatives had continuously represented said clerical employes for more than nine years past, during all of which time said defendant railroad company had recognized and treated the said Railroad Brotherhood as the duly accredited representative of said clerical employes in all matters and disputes with respect to wages, hours, working conditions, et cetera, in which said clerical employes were interested

and said defendant railroad company, its officers and agents, especially those herein complained of, well knew that said Railroad Brotherhood, and its officers and representatives, were ready, willing and able to represent and act for said clerical employes, but in order to carry out and further their unlawful and improper purposes, as aforesaid, said defendants, and each of them, wholly ignored the written authorizations held by said Railroad Brotherhood, and its officers, from more than 1100 of said 1700 clerical employes, and said defendants wholly failed and refused to inspect or check said written authorizations, or in any reasonable manner to determine the validity, genuineness, et cetera, of same, but arbitrarily and in bad faith pretended to have examined and checked the authorizations purported to have been presented by the said F. C. Ehlinger, and the said F. C. Ehlinger and his associates were and are mere "figure heads" and were never the choice of any number of the clerical employes approximating one-half thereof, and were never designated by anything like a majority of said 1700 clerical employes, all of which was well known to the defendants, as aforesaid.

II.

On or about August 20, 1927, the defendant J. G. Torian, assistant to the vice-president and general manager of said defendant railroad company, entered into an agreement concerning wages and compensation for said clerical employes, and in which agreement said defendant J. G. Torian, acting for and on behalf of defendant railroad company, and F. C. Ehlinger, A. G. Baker and Douglas D. Wade purporting to act for and on behalf of said clerical employes under the guise and subterfuge of "The Asso-

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ciation of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana," an organization purporting to consist of the clerical employes of said defendant railroad company, but in truth and in fact an organization promoted, fostered and encouraged by the defendant railroad company, and its officers, especially those herein complained of; that said "Association of Clerical Employees", et cetera, has never been and is not now a bona fide organization of said clerical employes organized, encouraged or carried on by any fair proportion of said 1700 clerical employes ordinarily eligible to membership in an organization truly expressive of their ideas, welfare and interest, but the same constitutes what is commonly referred to among labor unions and labor organization as a "company union" or "rump union," commonly used from time to time among railroad companies or other large employers of skilled labor to discourage their employes from having membership in regularly constituted labor unions or labor organizations, and through which such railroad companies and other large employers of labor from time to time control to a greater or less extent the demands of their employes; that said "company union" or "rump union" could not and would not have secured as many as 100 members from among said total of approximately 1700 clerical employes without the active interference, influence and coercion exercised by said defendant railroad company over the self-organization of its said clerical employes, and said "company union" or "rump union" could never and would never have been designated as the representative of as many as 100 of said total of 1700 clerical employes without such interference, influence and coercion exercised by the defendant

railroad company over its said clerical employes in the premises; that said agreement herein referred to is as follows:

107 The Association of Clerical Employees Southern Pacific Lines in Texas and Louisiana.

Memorandum of Agreement
Between
Texas and New Orleans Railroad Company

(Lines of
The Galveston, Harrisburg and San Antonio Railway Company,
Texas and New Orleans Railroad Company,
Louisiana Western Railroad Company,
Morgan's Louisiana and Texas Railroad and Steamship Company,
Iberia and Vermilion Railroad Company),

(Lines of
Houston & Texas Central Railroad Company),

(Lines of
The Houston, East and West Texas Railway Company,
Houston and Shreveport Company),

and

The General Committee of The Association of Clerical Employes of the Southern Pacific Lines in Texas and Louisiana; representing the Clerical Employes, other than General Office Employees.

1. Without otherwise modifying or affecting the existing rules with respect to working conditions of clerical employees of these Lines other than General Office employees, it is hereby agreed by and between the Company and the General Committee of The Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana that an increase aggregating the sum of $100,000.00 per annum shall be distributed by joint action of the representatives of the Company and of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana in such a manner as to bring about just and equitable rates for the clerical employees.

2. The adjustments in rates of pay that will be made under the provisions of this agreement will be placed in effect as of August 16, 1927, provided they are worked out in time for the current payrolls. If this is not accomplished, the adjustments covered by this agreement will be put in effect as of September 1, 1927.

3. This agreement shall continue in force until September 1, 1928, and thereafter until thirty (30) days' notice in writing stating the change or changes desired shall have been given by either party to the other.

Signed at Houston, Texas, August 20, 1927.

For the Company:

(Signed) J. G. TORIAN,

Assistant to Vice-President
and General Manager.

For the Employees:
(Signed) F. C. EHLINGER,
General Chairman.
(Signed) A. G. BAKER,
Vice-General Chairman.
(Signed) DOUGLAS D. WADE,
General Secretary-Treasurer.

The Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

108 That the above agreement was brought about by the defendants under the guise of an official action taken by the said J. G. Torian in connection with the performance of his duties in behalf of said defendant railroad company, and under such circumstances that it could be made to appear that the same was in due course of the railroad company's business as attended to in good faith by the said J. G. Torian; but the Court is given to understand that said agreement, and no part thereof, was in fact the good faith or bona fide action of the said J. G. Torian, and that said contract or agreement, and all matters relating thereto, were done for the sole purpose of interfering with, influencing and coercing some or all of said 1700 clerical employes with respect to their self-organization and for the further purpose of interfering with, influencing and coercing some or all of said 1700 clerical employes with respect to the designation of their representative or representatives to act for and in their behalf in connection with disputes between the defendant carrier and said clerical employes, and said action was taken despite the fact (which was well known to the defendant railroad company and its officers, es-

pecially those herein complained of) that said Railroad Brotherhood as representative of said clerical employes had in November, 1923, entered into a wage agreement for the wage scale then existing with said railroad company since which time said wage agreement has been in effect continuously, and during the last year and one-half of such time said clerical employes had been in dispute with the defendant carrier over the matter of wages and had been attempting to secure an increase in their pay comparing favorably with the wages paid by other common carriers in this territory for similar services, and not having been able to secure any increase in wages for said clerical employes said Brotherhood had, on or about August 15, 1926, duly submitted said wage controversy to the United States Board of Mediation, from which time said wage controversy has been continuously pending before the said
109 United States Board of Mediation, and despite the fact that said United States Board of Mediation had expressly refused to relinquish jurisdiction of said wage controversy, as appears from the following exchange of telegrams and letters between said defendants and the said Board of Mediation:

Houston, Tex., August 2, 1927.

Hon. Samuel E. Winslow, Chairman,
U. S. Board of Mediation,
Earl Bldg.

Case filed with Board by Brotherhood of Railway Clerks your file C dash hundred and six has been handled in mediation with Mediator Neff. Stop. Settlement not affected through mediation whereupon Mediator proposed arbitration which was declined. Stop. It is our view that failure to agree to arbitrate at once

and automatically terminates connection of Mediators with the case and will be glad to have you confirm relinquishment of jurisdiction of the matter as we believe we are in position to bring about immediate settlement of case with the authorized representatives of our clerical employees.

(Signed) G. S. WAID.

Washington, D. C., August 3, 1927.

Mr. G. S. Waid,
Vice-Pres. and Gen'l Mgr.,
Southern Pacific Railroad (Texas Lines),
Houston, Texas.

Response your telegraphic inquiry your view that failure to agree to arbitrate at once automatically terminates connection of Mediators with case appears in error. Stop. Only effect of such action up to this time has been postponement with resumption subsequently at more appropriate time. Stop. Our Board has not relinquished jurisdiction in any case thus far when its services have been properly invoked until matter has been amicably adjusted. Stop. If parties in difference which in this case are your company and Brotherhood of Railway and Steamship Clerks find it possible to compose differences themselves our board will be glad to receive written request from both said parties that case be withdrawn. Stop. Our Board very willing to comply such request but your statement quote authorized representatives of our clerical employees unquote does not make clear whether party instituting this case is comprehended in your suggestion.

(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation.

Houston, Texas, August 4, 1927.

John Marrinan, Secretary,
United States Board of Mediation,
Washington, D. C.

Your message third replying to our second to Chairman your Board. Stop. While Governor Neff has been as helpful as possible and has done everything possible to bring out adjustment difference with clerical employees it is clear to us and we believe recognized by him that nothing further can be done with case presented by Brotherhood of Railway and Steamship Clerks. Stop. This organization does not represent a majority of our clerical employees and we will have no further dealings with them. Stop. We are satisfied that we can make amicable adjustment with association of clerical employees Southern Pacific Lines which does represent majority of clerical employees and it is the opinion of our counsel after careful consideration of the law that there is nothing in the law or in the present situation which can or should prevent us from reaching agreement with organization last mentioned. Stop. The inference in your telegram that we can deal only with Brotherhood of Railway and Steamship Clerks seems to us and to our counsel to be obstructive rather than helpful. Stop. We will therefore endeavor to work out solution satisfactory to us and employees which we believe will be and which we are entirely certain should be satisfactory to Governor Neff who is entirely familiar with the whole situation. Stop. In view of this we still hope that you will see your way clear to advise that you have no objection to our disposing of this question.

(Signed) G. S. WAID.

Washington, D. C., August 4, 1927.

Mr. G. S. Waid,
Vice-Pres. and Genl. Mgr.,
Southern Pacific Railroad (Texas Lines),
Houston, Texas.

Response your telegram this date regarding case file C one hundred six regret to advise that position of Board as communicated to you yesterday cannot be modified at this time.

(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation.

September 28, 1927.

File C-106.

Mr. A. D. McDonald, President,
Southern Pacific Railway Co.,
Texas and Louisiana Lines,
2401 Benenson Bldg., 165 Broadway,
New York, N. Y.

Dear Mr. McDonald:

By instruction of the Chairman I am communicating in an effort to clear up certain misunderstandings which appear to have retarded progress in the settlement of certain differences between your Company and the Brotherhood of Railway Clerks.

Following a conference in New York between you and representatives of the Clerks' organization the same delegation visited our offices. President Fitzgerald reported to us that you entertained an impression, said to have been based upon reports to you from subordinates, that Governor Pat M. Neff, the Member of our Board who handled this matter in mediation, had made certain statements which might have encouraged officials of your company to abandon efforts to adjust the matters

in difference. It was further represented to us that while you personally had manifested a clear disposition to comply with the letter and spirit of the Railway Labor Act, you believed it advisable to have this important factor in the case cleared up before any further moves were considered.

Accordingly this office made a complete report to Governor Neff on the latter developments, copy of which is herewith attached, and has received his reply, also attached. It would appear from the record, as you will note, that you have been misinformed, if our report from the Clerks' representatives was accurate.

The enclosures herewith forwarded make unnecessary a detailed review of the more recent developments in this matter. It appears sufficient to state that
111 the Southern Pacific Company through its representatives in Texas has adopted a course in handling this case with is not in conformity with our Board's understanding of correct practice under the Act. In all the circumstances set forth, and giving full credance to your reported desire to discharge all the proper obligations of your Company under the Act, it is respectfully suggested that you co-operate by giving such instructions as may seem to be appropriate to officials of your Company in direct charge of these matters to the end that the services of our Board may be resumed in an effort to dispose of this matter amicably and on some basis acceptable to both parties.

Yours faithfully,
(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation.

October 11, 1927.

File C-106.

Mr. H. M. Lull,
Executive Vice-President,
Southern Pacific Lines in Texas and La.,
Houston, Texas.

Dear Mr. Lull:

I have at hand your letter under date of August 7th, in which you give consideration and make reply to certain recent efforts made by our Board to compose differences between your Company and the Brotherhood of Railway Clerks, our file C-106. Note is taken of some discrepancy between your understanding of the facts surrounding mediation and the understanding of Governor Neff who handled this matter at Houston. While this misunderstanding is of minor importance it is unfortunate that it persists because it is likely to have had some influence in shaping your attitude toward this problem.

The opinion of your General Counsel that the functions of the Board of Mediation have terminated appears in conflict with the views of Governor Neff and of our Board as communicated to you in our telegram of August 3rd, addressed to Mr. G. S. Waid. It is our understanding that a governmental agency charged with the administration of law has some voice in determining when its duties have been fully discharged under the law. If the parties subject to the provisions of law have the right to determine when Federal jurisdiction terminates, statutory provisions would lose all force.

It is quite possible that in certain situations our Board will deem it wise to relinquish jurisdiction, but in this particular matter our Board has not yet taken such action.

Your statement that telegrams addressed to our Board under date of August 2nd and 4th were "not requests that the Board relinquish jurisdiction * * * appears to be in error. A telegram from Mr. G. S. Waid addressed to Chairman Winslow under date of August 2nd, contains this language:

"Advise of your relinquishment of jurisdiction of the matter."

The record in this case indicates that on or about August 6th, your Company negotiated an agreement with the Southern Pacific Clerical Employees' Association, effective August 16th, in which certain wage alterations over the previously existing schedule
112 held by the Brotherhood of Railway Clerks were made. Section 6 of the Railway Labor Act contains in part, this language:

"* * * In every case where such notice of intended change has been given or conferences are being held with reference thereto or the services of the Board of Mediation have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by Section 5 of this Act, by the Board of Mediation. * * *"

Since our records disclose a request for mediation of a difference between your Company and the Brotherhood of Railway Clerks, who were then the holders of the schedule governing this class of employees on your property; since such application was declared eligible for mediation and the services of our Board extended; and since both a member of our Board on the ground

and this office expressly indicated that the matter had not been finally acted upon, we cannot concur in your conclusion that "the provisions of Section 6 of the Act have no application."

In order that there may be no misunderstanding, your reservation of a right to contend that the Brotherhood of Railway Clerks by instituting suit against your Company and certain of its officers constituted "breaking off of efforts to settle matters in dispute by mediation and a refusal to go into arbitration", it appears desirable to make it a matter of record that the aforesaid injunctive process was employed by the organization after your Company had declined all concessions in mediation and had positively refused to arbitrate. Of course, our Board did not participate in this latter proceeding in any way.

In view of your concluding statement that it is the desire of the officials of the Southern Pacific Lines in Texas and Louisiana to discharge all their proper obligations under the Act, it is a matter of regret to our Board that some opportunity for amicable adjustment did not develop through our more recent effort to resume mediation. It is evident that a controversy has existed and still exists between a considerable number of your employees in clerical service and your company. In compliance with its statutory duty our Board again respectfully urges you to join the clerks' organization in their expressed desire to submit this controversy to arbitration under the porvisions of the Railway Labor Act.

Yours faithfully,

(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation.

JM:ABL

Said action of said company in entering into said wage agreement of August 20, 1927, with said "company union" or "rump union" when the aforesaid wage controversy was still pending before the United States Board of Mediation was in violation of Section 6 of the Railway Labor Act which provides as follows:

Sec. 6. Carriers and the representatives of the employees shall give at least thirty days' written notice of an intended change affecting rates of pay, rules, or working conditions, and the time and place for conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice and said time shall be within the thirty days provided in the notice. Should changes be requested from more than one class or associated classes at approximately the same time, this date for the conference shall be
113 understood to apply only to the first conference for each class; it being the intent that subsequent conferences in respect to each request shall be held in the order of its receipt and shall follow each other with reasonable promptness. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Board of Meditation have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by Section 5 of this Act, by the Board of Mediation, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation.

Said wage agreement granting an increase of $100,000.00 in wages was entered into by said company with said "company union" for the sole purpose of influencing said clerical employes of said company to join said "company union" and to withdraw their memberships in and support of the Brotherhood. Owing to the manner in which said wage increase was applied by agreement between said company and the representatives of said "company union", the clerical employes as a whole of said company have received little benefit thereby, a large part of said amount of $100,000.00 going in increases in as much as $10.00 a month to high-salaried employes such as chief clerks and other employes not eligible for membership in the Brotherhood, while low-salaried clerks have received as little as a one cent a day increase.

III.

On September 6, 1927, a committee of said Railroad Brotherhood consisting of H. W. Harper, general chairman, John W. Walker, general secretary-treasurer, C. A. Brandin, division chairman at Houston, J. C. Moulin, vice-general chairman, and E. L. Griffith, local representative in the Houston Freight Warehouses, called upon H. M. Lull, executive vice president of said defendant railroad company at his offices in the Southern Pacific Building, Houston, Texas, and discussed with him the defendant company's refusal to
114 consider the authorizations which the Railroad Brotherhood then held and now holds to represent the majority of said 1700 clerical employees of said defendant company in Texas and Louisiana, and the recognition by said company of the "company union"

or "rump union" as duly accredited representative of said clerical employes; said defendant H. M. Lull stated in substance that the company had recognized the general committee of said "company union" as being the sole duly accredited representative of all the clerical employes in the company's employ in Texas and Louisiana, except general office employes, and that neither he or any other officers of the defendant company would give any consideration to the claims of said Railroad Brotherhood to be or act as representative of said clerical employes; he further stated that the matter of representation was a closed one so far as the defendant railroad company was concerned and that the company and its officers declined to participate in any kind of an investigation to determine the relative merits or the correctness of the claims of the Railroad Brotherhood and the "company union" to be the duly accredited representative of said clerical employes. The said Railroad Brotherhood committee thereupon stated that they were then and there ready to produce for examination by the defendant H. M. Lull genuine written authorizations from approximately two-thirds of said clerical employes to represent them, but said defendant H. M. Lull declined to examine said authorizations or to even consider any other evidence that the Railroad Brotherhood might have to show that it had the right to act as the duly accredited representative of said clerical employes, but stated in substance that the company was satisfied with the claim of the "company union" that it represented the majority of said clerical employes. Said Harper thereupon asked said defendant H. M. Lull if he would consider any plan to determine which organization represented the majority of said clerical employes and said defendant H. M. Lull

replied that he would not, as the company had already entered into an agreement with the "company
115 union" and the matter was closed. On September 30, 1927, said Harper wrote said defendant H. M. Lull as follows:

San Antonio, Texas, September 20, 1927.

Mr. H. M. Lull,
Executive Vice-President,
Southern Pacific Lines,
Houston, Texas.

Dear Sir:

It has come to our attention that Mr. J. G. Torian, under date of August 9, 1927, advised division and other officers of the carrier, that the committee of the so-called association of clerical employes will hereafter be recognized by the carrier as being the duly accredited representative of clerical employes on these Lines. A two-thirds majority of the employes have voluntarily and definitely chosen to be represented by the Brotherhood of Railway Clerks, and the company's action in extending recognition to an unauthorized committee, in whose selection a majority of the employes had no part, does violence to that portion of the Railway Labor Act, which guarantees to employes the right of self-determination as to who shall represent them in matters at issue with the company.

The so-called association of clerical employes does not have, nor can it produce bona fide written authorizations from a majority of the employes to represent them. Such authorizations, as have been obtained by the association were secured largely perforce the improper influence brought to bear upon them by officers and other representatives of the company in violation of the Rail-

way Labor Act, and do not represent the voluntary choice of the minority from whom the association purports to have secured authorization. On the other hand the Brotherhood of Railway Clerks has lawfully obtained, does have, can produce, and will produce 1125 genuine, bona-fide written authorizations, all of which were voluntarily given, and truly represent the free and untrammeled choice of each and every individual signer as to who shall represent them. These written authorizations were filed under oath as exhibits in Federal Court, and they were not challenged by representatives of the company nor by representatives of the association, solely because of their self-recognized inability to successfully challenge the validity of the authorizations.

The following is taken from a letter, addressed to the General Chairman of the Brotherhood of Railway Clerks, by Mr. J. G. Torian, under date of November 14, 1923:

"At conference yesterday, I advised that the carrier would comply with Decision No. 1971 of the United States Railroad Labor Board and recognize the Organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employes by secret ballot selected other representation."

The above is part of an agreement between the Brotherhood of Railway Clerks and the company, to dispose of a representation dispute upon the basis of
116 Decision No. 1971, and the employes would like to believe that the company will keep faith with its employes, and fulfil its written agreement. If the carrier has withdrawn recognition heretofore extended to the Brotherhood Committee, without even granting

a hearing, it has violated both the spoken and written word of an authorized officer, as indicated in the letter quoted above.

The Brotherhood of Railway Clerks has been recognized for more than nine years, has a wage agreement in writing with the company, and also has a rules agreement with the company in writing, neither of which has been abrogated through negotiations with the Brotherhood Committee, nor otherwise by legal and proper methods. The management has notified officers of the company that hereafter the association committee will be recognized, but has not notified the Brotherhood Committee that recognition has been withdrawn from our organization, nor will they discuss our status in conference. We, therefore, find it necessary to request you to advise if the company now declines to recognize the Brother [Brotherhood] Committee as being the duly authorized and duly accredited representative of the clerical employes on these Lines, and if so, upon what basis. An early reply will be greatly appreciated.

Yours truly,

(Signed) H. W. HARPER,
General Chairman.

CC: Mr. A. D. McDonald, President.

and sent a copy of said letter to said A. D. McDonald, president of said company, but he has received no reply thereto from either said defendant H. M. Lull or said A. D. McDonald.

That by said acts and conduct aforesaid the defendant H. M. Lull in substance and effect acquiesced in, ratified and approved all of the acts and conduct of the defendant J. G. Torian, as hereinabove set forth, and

said defendant H. M. Lull had either directed and authorized the said J. G. Torian with respect to said matters and things, or, knowing the facts and circumstances, acquiesced in, ratified and approved the acts and conduct of the said defendant J. G. Torian, and the Court is given to understand that the same motives prompted the defendant H. M. Lull and that in respect to all of said matters and things he was acting with the said defendant J. G. Torian and other officers and agents of said defendant railroad company, and acting for and on behalf of said defendant railroad
117 company and in pursuance of the conspiracy herein alleged.

IV.

On September 9, 1927, a committee of said Railroad Brotherhoood consisting of E. H. Fitzgerald, grand president, H. J. Chapman, grand lodge representative, Richard P. Dee, vice-grand president, and said H. N. Harper, called upon said A. D. McDonald, president of said defendant railroad company, at its offices in New York City, and advised him that the managing and executive officers of his said company in Texas and Louisiana had withdrawn without notice to the Railroad Brotherhood the recognition by said defendant company of said Railway Brotherhood as the duly accredited representative of said clerical employes in Texas and Louisiana, and had designated and recognized the said "company union" as the duly accredited representative of said clerical employes and had refused to examine, although duly tendered, the authorizations held by said Railroad Brotherhood of almost two-thirds of said clerical employes to represent them and had

refused to discuss with the representatives of the Brotherhood any plan to determine whether said Railroad Brotherhood or said "company union" held the authorizations of a majority of said clerical employes. Said A. D. McDonald advised said committee of said Railroad Brotherhood that whatever had been done by the defendant H. M. Lull and the other officers of said company met with his approval and would be sustained by him as representing the attitude of the defendant railroad company; he, however, finally suggested that the differences between said defendant railroad company and said Railroad Brotherhood as to the question of representation be taken up with the United States Board of Mediation and see if through its aid such differences could not be adjusted and this suggestion met
118 with the ready and hearty approval of said committee of said Railroad Brotherhood which immediately proceeded to Washington and laid the matter before the United States Board of Mediation as suggested by the said A. D. McDonald. Said Dee, however, received on October 11, 1927, a telegram from said United States Board of Mediation advising that said A. D. McDonald had refused to submit on behalf of said defendant railroad company said controversy to said United States Board of Mediation and to resume the mediation of the aforesaid wage controversy.

That the acts, conduct, statements and attitude of the said A. D. McDonald were all in the scope of his authority as the president of said defendant railroad company, and were all done for and on behalf of said defendant railroad company, and under all the facts and circumstances, bind the said defendant railroad company with respect to all of the matters and things done by its officers and agents as herein alleged.

119 V.

The freight and yard offices at El Paso, Texas, are operated jointly by the Southern Pacific Company (Pacific System) and the Southern Pacific Lines in Texas and Louisiana, i. e., the Texas and New Orleans Railroad Company. On November 22, 1924, a joint agreement was signed by the Southern Pacific Company (Pacific System) represented by A. T. Hancock, Assistant General Manager of said Southern Pacific Company (Pacific System); Galveston, Harrisburg and San Antonio Railway Company (now Texas and New Orleans Railroad Company), represented by the said J. G. Torian; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Southern Pacific Lines (Pacific System), represented by R. W. Lang, General Chairman thereof; and by the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes, Southern Pacific Lines in Texas and Louisiana, represented by said H. W. Harper, General Chairman thereof; whereby said railroad lines established the El Paso Joint Terminal, and certain agreements were entered into therein relating to conditions of employment of and wage schedules of employes in said El Paso Joint Terminal. A true copy of said agreement is as follows:

"Between

The Galveston, Harrisburg and San Antonio Railway Company,

The Southern Pacific Company (Pacific System),

and

Their Respective Clerks and Station Force Employes Represented by the Brotherhood of Railway and Steamship Clerks.

Article 1.

It is agreed that the Freight Stations and Yard Offices of The Galveston, Harrisburg and San Antonio Railway Company and The Southern Pacific Company (Pacific System) at El Paso, Texas, shall be consolidated effective December 1st, 1924, or as soon thereafter as practicable, and the assignment of employes to this joint service as between employes of the Galveston, Harrisburg and San Antonio Railway Company and employes of the Southern Pacific Company (Pacific System) shall be made according to percentages based on the number of hours worked by the employes of each company for the twelve month period ending October 31, 1924.

This percentage basis has been developed and
120 is as follows:

Clerks (Other than Yardmasters').

Galveston, Harrisburg and San Antonio Railway Company	56%
Southern Pacific Company (Pacific System)	44%

Clerks (Yardmasters').

G. H. & S. A. Ry. Co.	75%
S. P. Co. (Pacific System)	25%

Warehouse & Platform Forces (Excluding Clerks and Other Station Employes).

G. G. & S. A.	47%
S. P. Co. (Pacific System)	53%

Callers & Yard Office Messengers.

G. H. & S. A. Ry. Co.	50%
S. P. Co. (Pacific System)	50%

In reducing or increasing forces the same percentage basis will be maintained.

Article 2.

Seniority of employes within the consolidated station and yard organization at El Paso and the Rio Grande (Southern Pacific, Pacific System) and El Paso (G. H. & S. A.) Divisions, will be provided for and applied in the following manner:

(a) A seniority roster, designated as comprised of employes of the consolidated organizations, including those losing their positions through force reduction in connection with the consolidation.

Initial assignments to positions in the consolidated organizations will be made from employes comprising Roster No. 1.

(b) Roster No. 2 will include employes of the Rio Grande Division, outside of El Paso Terminal.

On Roster No. 2, seniority dates of employes of former El Paso & Southwestern, Western Division, who are in service on November 30, 1924, will be followed by a * (star).

(c) Roster No. 3 will include employes of the El Paso Division, outside of El Paso Terminal.

On Roster No. 3, seniority dates of employes of the El Paso Division who are in service on November 30, 1924, will be followed by a * (star).

Roster No. 3 will continue in existence only so long as it contains starred seniority dates.

(d) Vacancies or new positions developing in the consolidated organizations, as covered by Roster No. 1, subsequent to the initial assignments, will be bulletined to employes covered by that Roster, with copies to employes of Roster No. 2, and Roster No. 3, (so long as it is in existence) according to percentage status as between Southern Pacific (Pacific System) and G. H. & S. A. employes, within the consolidated organizations.

In making assignments first consideration will be given to employes covered by Roster No. 1; if
121 no acceptable applicant, then consideration to be given to applicants from employes covered by Roster Nos. 2 or 3 according to prescribed percentage bases.

Employes from Rosters Nos. 2 and 3 securing positions covered by Roster No. 1 will take new seniority dates thereon, as of the date their pay commences on the new assignment, except that employes with starred seniority dates will carry such dates with them into the consolidated organizations.

Article 3.

The committee representing employes of the respective railroads will continue their jurisdiction as prior to this agreement. Rules governing conditions of employment and other provisions of the schedules as now in effect or which may hereafter be negotiated between the respective railroads and the employes represented in

the consolidated office and in the consolidated yard, will apply to the employes of the respective railroads as heretofore, except as specifically modified by this agreement.

Article 4.

This agreement will become effective with the consolidation and will be carried out by all parties hereto subject to thirty days' notice of any desired change by the authorized representative of either or any of the parties to this agreement.

Signed at El Paso, Texas, this 22nd day of November, 1924.

FOR THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY:

(Sgd.) J. G. TORIAN,
Ass't. to Vice-President & General Manager.

FOR THE SOUTHERN PACIFIC COMPANY (PACIFIC SYSTEM:

(Sgd.) A. T. HANCOCK,
Assistant to General Manager.

FOR THE EMPLOYEES:

(Sgd.) H. W. HARPER,
Chairman, B. of R. C., K. H. & S. A. Ry. Co.

(Sgd.) R. W. LANG,
Chairman, B. of R. C., So. Pac. Co. (Pacific System).

122 Subsequently, due to the granting of an increase in rates of pay to clerical employes of the Southern Pacific Company (Pacific System), it became necessary to revise the rates of pay of the employes in the El Paso Joint Terminal covered by the aforesaid agreement, and the said J. G. Torian, A. T. Hancock, and R. W. Lang met in San Francisco in September, 1927, and arranged to have a conference at El Paso on September 28, 1927, between the managements of the two railroad corporations and committees representing the clerical employes of the said two companies. Nothing was said at this San Francisco conference as to what organization would represent the clerical employes of the said T. & N. O. Ry. Co. and the said J. G. Torian did not advise the Railroad Brotherhood's representatives of said proposed meeting on September 28th at El Paso, but did so advise the representatives of the "company union", to-wit, the said Ehlinger, Baker and Wade, and arranged for them to attend said conference. Said conference at El Paso was held in the office of the division superintendent of the defendant railroad company, and there were present at said conference the said A. T. Hancock, representing the Southern Pacific Company (Pacific System), the said J. G. Torian, and the W. R. Mann, Assistant Superintendent of the El Paso Division of the said T. & N. O. R. R. Co., representing the T. & N. O. R. R. Company, R. W. Lang, P. E. Whisner, and H. A. Christman, General Chairman, Division Chairman and General Secretary, respectively, of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Southern Pacific Lines (Pacific System), and the said Ehlinger, Baker and Wade purporting to represent said "company union" and/or said clerical em-

ployes. Said Harper had received advices of said conference and at the appointed hour for the conference presented himself at the door of the conference room, together with the said Lang, Whisner, and Christman,—said Lang, Whisner, and Christman were admitted to said conference room as representatives of the clerical employes of the Southern Pacific Railway (Pacific System), but when said Harper started to enter the door of said conference room his entrance thereto was barred by the said defendant W. R. Mann placing himself in the doorway of such conference room in such manner as to bar passage to Harper and the said defendant Mann, stating that he would not permit said Harper to enter the conference room, and when questioned by
123 said Harper as to why he was denied entrance, Mann stated, "We have a committee in there to represent the clerks." Said Harper demonstrated with the said Mann, stating that he had been instructed to appear at said conference by the clerical employes of the T. & N. O. Ry. Co., in said El Paso Joint Terminal, to represent their interests and that he then had the written authorizations from every man except one in said El Paso Joint Terminal to represent them in said conference and he displayed to the said Mann for his inspection the said written authorizations; but the said Mann refused to examine same other than to give them a perfunctory glance; Mann stated that he understood that the "company union" committee derived their authority to represent the clerical employes in the El Paso Joint Terminal from their claim to represent a majority of the clerical employes of the said T. & N. O. R. R. Co., in Texas and Louisiana, as a whole; Harper then offered and tendered to said Mann for his examination the written authorizations of a two-thirds ma-

jority or thereabouts of the clerical employes of the T. & N. O. R. R. Company in Texas and Louisiana to represent them, but said Mann declined to inspect said written authorizations and stated that he did not care to enter into further argument with Harper, but that Harper could not in any event enter the conference room. Harper then asked Mann if the company intended to arbitrarily designate the clerical employes' representatives without regard to the wishes of the employes themselves, to which Mann replied that that was a matter which he did not handle and that he would not discuss it further. Subsequently, on the same day, C. R. Morrill, Division Superintendent of the El Paso Division, who is said Mann's next superior officer, stated to Harper that Mann did not act upon his own authority, and that he (Morrill) had not instructed Mann to deny entrance to the conference room to Harper. When asked pointblank by the said Harper if the said J. G. Torian had instructed either the said Morrill or the said Mann to keep him out of the conference, Morrill declined to answer. The Brotherhood Committee of the Pacific System declined to participate in any conference with the committee of the "company union" of the T. & N. O. R. R. Company, and no agreement was reached as to the matters scheduled for consideration at said conference. The clerical employes in the employ of the T. & N. O. R. R. Co., in the El Paso Joint Terminal did not designate or authorize said "company union" committee to represent them in the aforesaid conference and the said "company union" committee appeared at said conference to discuss the wages of said clerical employes in said El Paso Joint Terminal, without having interviewed a single one of said clerical employes, and without having any knowl-

124

edge whatever as to the wishes of said clerical employes with regard to revision of rates. Said Harper had prior to said conference attended a meeting of said clerical employes in said El Paso Joint Terminal, who were members of the Railroad Brotherhood, more than a majority of said clerical employes in said El Paso Joint Terminal being members of the Brotherhood and had received their instructions as to their desires concerning the proposed revision of wage schedules. In this connection additional details of the occurrences upon the occasion in question are reflected by the affidavit of R. W. Lang, dated San Francisco, California, October 14, 1927, which is as follows:

"San Francisco, Calif., Oct. 14, 1927.

To whom it may concern:

I, R. W. Lang, a resident of the City and County of San Francisco, State of California, hereby make the following statement concerning the actions of certain Officers of the Texas & New Orleans Railroad Company in denying Mr. H. W. Harper the right and privilege of acting as the representative of certain employes of that railroad in a wage conference held in El Paso, Texas, on September 28, 1927:

In the capacity of General Chairman of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, representing office, station and store employees of the Southern Pacific Company, Pacific Lines, and in the company of Mr. H. A. Christman, General Secretary of the Brotherhood, and Mr. P. E. Whisner, Division Chairman of the Brotherhood, we met the said H. W. Harper in El Paso, Texas, on Septem-

ber 28, 1927, and proceeded to the office of the Superintendent of the Texas & New Orleans Railroad Company in that city for the purpose of meeting with Mr. A. J. Hancock, Assistant to the General Manager of the Southern Pacific Company, Pacific Lines, and Mr. J. G. Torian, Assistant to the Vice-President and General Manager of the Texas & New Orleans Railroad Company.

The purpose of such meeting was to discuss and attempt to agree upon rates of pay for employes of the two mentioned railroads employed in the El Paso Joint Terminal, such meeting having been previously arranged for between myself, Mr. A. J. Hancock and Mr. J. G. Torian.

Upon arrival at the said office of the Superintendent of the Texas & New Orleans Railroad Company, I opened the door and stepped into the room, followed by the aforementioned H. A. Christman, P. E. Whisner, and H. W. Harper. A gentleman, whom I recognized as a Mr. Mann, Assistant Superintendent of the Texas & New Orleans Railroad Company, and who was inside the room we were entering, stepped to the door and closed same from the outside before the said H. W. Harper could enter. After arriving inside the room and noting that the said H. W. Harper was not present inside the room, I returned to the door, opened same, and found the aforementioned Mr. Mann standing just outside the door with his arm across the opening in the door.

I inquired of the said H. W. Harper if he was coming in the room to attend the conference and he replied that the Assistant Superintendent, Mr. Mann, would not permit him to enter the room.

I thereupon inquired of the said J. G. Torian, Assistant to the Vice-President and General Manager of the Texas & New Orleans Railroad Company, if it was true that the said H. W. Harper was being refused the right and privilege of attending the conference and wage negotiations. The said J. G. Torian replied that the said H. W. Harper was not recognized as the representative of the employes on the Texas & New Orleans Railroad and would not be permitted to attend the conference.

I then called the attention of the said J. G. Torian to the fact that a signed Joint Agreement dated November 22, 1924, existed which had been signed by himself on behalf of the then Galveston, Harrisburg & San Antonio Railway Company (now the Texas & New Orleans Railroad Company), by the aforementioned A. J. Hancock on behalf of the Southern Pacific Company, Pacific Lines, and myself and the said H. W. Harper on behalf of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes representing the employes involved in the purpose of the conference and inquired of the said J. G. Torian if such Joint Agreement had been abrogated or changed in any manner.

The said J. G. Torian replied in effect that the aforementioned Joint Agreement had not been abrogated, nor changed, but that the method of representation of the employes covered by that agreement had been changed, further, that hereafter the employes of our class on the Texas & New Orleans Railroad Company would be represented by the Officers of the Employes' Clerical Association. The said J. G. Torian made further statements to the effect that the Agreement between the Texas & New Orleans Railroad Company and the Broth-

erhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, covering the conditions of employment of employes of our class on that railroad had not been abrogated, but that the method of representation thereunder had been changed.

Upon my further protestations that the said H. W. Harper should be recognized as the representative of the employes of the Texas & New Orleans Railroad Company in the El Paso Joint Terminal under the terms of the aforementioned Joint Agreement of November, 1924, and permitted to be a party to the conference then about to take place, the subject of which was wages of employes, the said J. G. Torian continued to refuse to permit the said H. W. Harper to participate in the conference and made statement to the effect that if I did not and would not recognize the Officers of the Employes' Clerical Association as representatives of the employes of his railroad that I was at perfect liberty to bolt the conference.

(Sgd.) R. W. LANG.

Subscribed and sworn to before me this 14th day of October, 1927.

(Sgd.) JOHN L. MURPHY,
Notary Public in and for the City and County of San Francisco, State of California."

126 That by reason of the acts and conduct of the said W. R. Mann, as above alleged, he joined in said conspiracy, ratified, confirmed and became liable for all that had been theretofore done in connection therewith and continuously thereafter acted with the said defendants herein complained of pursuant to said conspiracy.

VI.

The defendant Texas and New Orleans Railroad Company on or about September 28, 1927, in the Division Engineer's Office of the El Paso Division of its said railroad, had prepared, encouraged to be prepared, and aided in preparing, the constitution and by-laws of said "company union" or "rump union"—said preparation of said constitution and by-laws having taken place during the time of the defendant J. G. Torian's presence in said City of El Paso; a large number of copies of said constitution and by-laws were prepared, all of which were on paper furnished by the defendant railroad company, the same being prepared upon a mimeograph machine owned by the defendant railroad company, the necessary typing therefor and the necessary operation of said mimeograph machine being furnished by employes of said defendant railroad company during their working hours while being paid by said defendant railroad company, and with the full knowledge and consent of defendants J. G. Torian and W. R. Mann and other officers and agents of said defendant railroad company. In this connection the Court is informed that said constitution and by-laws were mimeographed by C. B. Chambers, assistant division accountant of and for the El Paso Division of said defendant railroad company, he being assisted therein by Joe Ward, a file clerk to the superintendent of said Division, who is not eligible for membership in the Railroad Brotherhood on account of the said Ward being a member of the per-
127 sonal office force of the superintendent of said El Paso Division. A copy of said constitution and by-laws so prepared and mimeographed is attached hereto, marked Exhibit "A" and here referred to as fully as though copied herein.

VII.

On or about August 31, 1927, there were prepared, printed and mailed to all, or practically all, of said 1700 clerical employes circular letters purporting to have been written by one D. D. Wade as general secretary and treasurer of the Association of Clerical Employes herein referred to as the "company union" or "rump union"; said circular letters were transmitted to various clerical employes in the State of Louisiana by means of a railroad mail service commonly known as "Railway Mail" and being delivered in railroad business envelopes of the kind commonly used by the defendant railroad company and marked "RRB, Standard Form 2595, 9-26-1 MM", which letters were distributed and delivered to said clerical employes through the channels ordinarily and customarily used in the distribution and delivery of railway mail—no United States postage stamps being placed upon said envelopes, and the same carrying no indication of postage having been paid thereon to the United States Postal Department. In this connection, it is asserted that unless the distribution of said circular letters was part of the official business of said defendant railroad company, and done under its direction, then said distribution through the railway mail constituted a violation of the United States Postal Laws. In this further connection, attention is directed to the general makeup of said letters, the kind of type, et cetera, used—the same are very similar to letters ordinarily and customarily used and distributed by the defendant railroad company in connection with its official business—the suggestion being made in this connection that said letters were either actu-

128 ally printed upon railroad company paper and

the printing being actually accomplished by the defendant railroad company, or the same were made so to appear for the purpose of creating in the minds of the clerical employes receiving the same that the defendant railroad company had caused said letters to be printed and distributed amongst them, thereby creating in the minds of said clerical employes a feeling of apprehension and coercion with respect to using their own judgment about selecting and designating their representatives to act for them in connection with their disputes with their employer. In this connection, a true copy of said letter is hereto attached, marked Exhibit "B", and here referred to as fully as though copied herein.

VIII.

During the period from approximately August 15, 1927, up to the time of the filing hereof, the defendant railroad company has furnished an office or headquarters at Room 22, Grand Central Depot Building, Houston, Texas, upon the property of said defendant railroad company—all for the use and convenience of said "company union" or "rump union" and its officials and those interested therein; and said defendant railroad company has encouraged and permitted the free use of said office and room and any and all conveniences appurtenant thereto, and has permitted and encouraged persons connected with and interested in said "company union" or "rump union" to use said office for the purpose of receiving mail, and has further encouraged and permitted said office to be used by such persons to prepare and mail out certain letters, a sample of which is a letter from F. C. Ehlinger, dated Houston, Texas, October 1, 1927, a true copy of which is hereto attached, marked Exhibit "C", and here referred to as fully as though copied herein.

129 IX.

On or about September 6, 1927, C. A. Brandin, division chairman of said Railroad Brotherhood, and E. L. Griffith, local chairman of said Railroad Brotherhood and the Houston freight warehouse, attended a conference with H. M. Lull, executive vice-president of said defendant railroad (hereinabove referred to in Paragraph III), and as an incident thereto the said Brandin and Griffith were required to be absent from their duties as clerical employes of the defendant railroad company from 10 A. M. until 3 P. M. on said date, whereupon four hours pay was deducted from the pay of each of said clerks, although the cause of their absence from their duties was well known to their superior officers and although permission to attend said conference had been obtained through regular channels; whereas, when representatives of said "company union" or "rump union" attended meetings and conferences similar in nature, no deduction whatever was made from their pay for the time lost or absence from their duties. In this connection, the affidavit of C. A. Brandin is hereto attached, marked Exhibit "D", and the affidavit of E. L. Griffith is hereto attached, marked Exhibit "E"—and both here referred to as fully as though copied herein.

X.

On or about June 9, 1923, H. W. Harper was granted indefinite leave of absence, effective June 15, 1923, to enable him to assume the duties as general chairman of said Railroad Brotherhood, since which time the said Harper has been treated as in all respects an employe of the defendant railroad company, as is usual

and customary with said defendant railroad company and other railroad companies in similar cases; and since which time the said Harper has each year been
130 issued an annual pass over all the lines of the defendant railroad company in the States of Texas and Louisiana, in order to enable him to attend meetings as general chairman of said Railroad Brotherhood, et cetera; on October 9, 1927, while on board one of the defendant railroad company's trains bound for Galveston, Texas, said Harper was advised by the conductor of said train that he had instructions to take up Pass No. A-25751, issued to the said Harper for the year 1927, and said conductor did not permit said Harper to ride on said pass from Houston to Galveston, said conductor having been given such instructions by the defendant railroad company, its officers and agents, especially those herein complained of. In like manner each year, for a period of the past five years, said Harper has also been issued by said defendant railroad company for himself and his mother, Mrs. Owen Harper, for transportation over the lines of said company in the El Paso Division, said pass being the usual type and kind of pass issued to employes having the requisite length of service, which Harper had had; the defendant railroad company has issued an order to all passenger conductors to take up this pass, being No. A-13805, issued to said Harper and his mother, on the grounds that said Harper is "out of the service". On or about September 24, 1927, the defendant railroad company entered a notation upon the personal record card of the said H. W. Harper on file in its office at Houston, to the following effect: "Has performed no service for company since June 14, 1923, and is dropped from the roster," and said Harper has not been offi-

cially notified by the defendant railroad company that he has been discharged from its employ, or his employment otherwise terminated, and has been granted no hearing ordinarily given to clerical employes; all of which acts and conduct on the part of the said defendant railroad company, its officers and agents, especially those herein complained of, were without cause or provocation on the part of the said Harper; and the said acts
131 and conduct of said defendant railroad company, its officers and agents, especially those herein complained of, were prompted solely because of and by reason of the said Harper's connection with and membership in said Railroad Brotherhood.

XI.

On September 9, 1925, John W. Walker was granted an indefinite leave of absence by the defendant railroad company to assume his duties as a member of the general committee of said Railroad Brotherhood; on October 6, 1927, said Walker sent to the treasurer of said company check for $1.40, premium on certain group life insurance which he had theretofore paid for along with and in the same manner as other clerical employes; on October 7, 1927, A. D. Mims, superintendent of the San Antonio Division of said defendant railroad company, returned said check to the said Walker with a letter in which he advised that Walker was no longer considered an employe of said defendant railroad company; no hearing has been granted to said Walker and no cause or reason assigned for terminating his employment; nor have the usual customs and practices been observed in his case which would have ordinarily occurred in the cases of employes discharged and removed from the service, or where employment was in

any manner terminated; all of which acts and conduct on the part of the said defendant railroad company, its officers and agents, especially those herein complained of, were without cause or provocation on the part of the said Walker; and the said acts and conduct of said defendant railroad company, its officers and agents, especially those herein complained of, were prompted solely because of and by reason of the said Walker's connection with and membership in said Railroad Brotherhood.

XII.

The defendant railroad company, through its officers and agents, especially those herein complained of, have frowned upon, discouraged and attempted to keep the members of said Railroad Brotherhood from attending to any business or discussions with respect to
132 encouraging or approving of said clerical employes joining and remaining members of said Railroad Brotherhood; but said defendant railroad company, its officers and agents, especially those herein complained of, have in no way discouraged, but, on the contrary, have in every way and by every means, encouraged and let it be known that said company approved of and desired its clerical employes to join said "company union" or "rump union."

In this connection, there is an affidavit of B. G. Hudson attached hereto, marked Exhibit "F", and here referred to as fully as though copied herein, and another affidavit of J. G. Goudry attached hereto, marked Exhibit "G", and here referred to as fully as though copied herein—the affidavits and the facts contained therein indicate in part the general disposition and attitude of said defendant railroad company, its officers and agents.

133 XIII.

That on numerous other occasions during the months of August, September and October, 1927, said defendants and each of them did various and sundry things calculated to interfere with, influence, and coerce their said clerical employes with respect to the self-organization of said clerical employes and with respect to the designation by said employes of representatives to act for them in connection with disputes then pending between said clerical employes and said defendant railroad company; that said acts and conduct on the part of defendant were of such a nature as to constitute interference, influence and coercion exercised by said defendant railroad company over the self-organization of their said clerical employes as well as to constitute interference with, influence and coercion exercised by said defendant railroad company over said clerical employes with respect to the designation by said employes of representatives to act for them in connection with pending disputes between said clerical employes and said defendant railroad company; that said acts and conduct by the defendants were so many and varied in form and upon such numerous occasions and in so many and devious ways, et cetera, that the dates, names, occasions and details thereof are incapable or practically incapable of being alleged more specifically, but that all of said acts and conduct (both that hereinabove specifically alleged as well as the acts and conduct here referred to) were done by defendants here complained of and were all in the scope of the authority of said railroad officials and were all done for and on behalf of said defendant railroad company and under all the facts and circumstances bind the said defendant

railroad company with respect to all of the matters and things done by its officers and agents as herein alleged; that each and all of said acts and conduct (both that hereinabove specifically alleged as well as the acts and conduct here referred to) were committed knowingly, wilfully and with unlawful intent and were a
134 part of the general plan and scheme of said defendants to ignore, violate, disobey and disregard said temporary injunction and each and all of said acts and conduct were pursuant to the agreement and conspiracy among said defendants as herein alleged. In this further connection it is represented to the Court that each and all of the defendants herein complained of were acting jointly and severally with respect to the things herein alleged and especially were each and all of the acts of the defendant J. G. Torian known to, approved by and encouraged by defendant G. S. Waid, under whose immediate direction the said defendant J. G. Torian performed his duties in behalf of said defendant railroad company; that all and singular of the foregoing acts, conduct and attitude on the part of said defendants are contrary to the form and the spirit of the aforesaid temporary injunction and of the laws and statutes in such cases made and provided and are against the peace and dignity of the United States of America.

Wherefore, your petitioners or applicants say that said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann jointly and severally are guilty of a violation of the aforesaid injunction and move this Honorable Court for a rule upon the said Texas & New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann

to be and appear before this Court on a day to be named by this Court to show cause, if any they have, why an attachment should not issue against them for contempt of Court in respect to the matters aforesaid; that they stand committed for contempt and be punished for contempt of this Court and that they be assessed proper punishment for said contempt and be required to pay any fine assessed to your petitioners or applicants and to serve and suffer any other punishment assessed; and that your petitioners or applicants be awarded all costs of Court and attorneys' fees and have such other and further relief as the nature of the case may require.

FULBRIGHT, CROOKER & FREEMAN,
Attorneys for Brotherhood of Railway Clerks, Etc., et al.

135 United States of America,
The State of Texas,
County of Harris.

H. W. Harper, of the City of San Antonio, Texas, being duly sworn on oath says that he has read the foregoing petition or information charging the Texas & New Orleans Railroad Company, N. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann with the violation of the temporary injunction entered by this Court on August 3, 1927, in Equity Cause Number 314, pending in this Court by reason of the matters specified in the foregoing petition or information.

Affiant further says that the foregoing petition or information is true in substance and in fact and that he has actual personal knowledge as to the truth of the facts set forth in said petition or information except as to those certain facts set forth in said affidavits

copied into said petition or information or appended thereto and made a part thereof and as to those facts he is informed and believes they are true and therefore says that they are true, and further says that the copies of the affidavits set forth in said petition or information are true copies of affidavits in his possession and which he stands ready to submit to this Court.

(Signed) H. W. HARPER.

Subscribed and sworn to before me this 19 day of October, 1927.

(Signed) L. C. MASTERSON,
Clerk, United States District Court for the Southern District of Texas.

136 EXHIBIT "A."

Section 1—Title.

The name of this association should be "The Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana."

Section 2—Scope.

Number 1. The membership of this association should be limited to the clerical employees of the Southern Pacific Lines in Texas and Louisiana (excluding General Office force) as follows:

1. Clerks (including Personal Office force).
2. Clerical Workers and Machine Operators.

3. Other Office and Station employees such as office boys, messengers, chore boys, train announcers, gatemen, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators.

All such employees should be eligible to membership.

Number 2. Membership in this association shall terminate on the severance of active employment on these Lines above named.

Section 3—Object.

The object of this association shall be:

Number 1. To promote and maintain harmonious and mutually satisfactory relations between the employees and the officers of the Lines by which they are employed; foster and promote a spirit of co-operation and mutual helpfulness and render all of the assistance that our association can give in promoting and maintaining efficient and economical operation and service to the public.

Number 2. To provide means for the orderly and proper handling and the satisfactory disposition of any questions or disputes that may arise concerning wages and working conditions.

Number 3. To promote the welfare and mutual interest of the members of the association.

Section 4—Voting.

Number 1. Any general questions that are submitted and approved by the Executive Committee will be submitted to the vote of the membership as a whole and shall be voted on by means of a secret ballot which shall be handled in line with the practice followed in conducting National and State elections.

Number 2. Any changes proposed in this constitutional shall be submitted to a vote of the membership and shall be voted on by means of a secret ballot as provided for in the preceding paragraph, a two-thirds affirmative vote of the membership shall be necessary for the adoption of the changes proposed.

By-Laws.

Section 1. This association shall, as provided in the constitution, be known as "The Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana."

137 Section 2. Membership in this association shall be limited to clerical employees as set forth in Paragraph 1, Section 2 of the Constitution.

Section 3. The association shall be composed of the following branches or local associations:

1. El Paso Division.

2. Houston Division (excluding Yoakum Shops and Store).

3. Victoria Division.

4. Terminals Division.

5. Beaumont Division.

6. Lafayette Division.

7. New Orleans Terminal.

8. Dallas Division.

9. Austin Division.

10. Houston General Shops.

11. Algiers General Shops.

12. Houston General Store.

13. Algiers Stores.

14. Yoakum General Store and Shops.

15. Dining Car Department.

16. T. & N. O. Creosote Works.

Section 4. An Executive Committee will be elected to handle the business of the association, which Executive Committee shall consist of a General Chairman, Vice General Chairman and General Secretary-Treasurer. No member shall be eligible to the position of General Chairman, Vice General Chairman or General

Secretary-Treasurer unless he has been in the service of the Southern Pacific Lines in Texas and Louisiana for a period exceeding three years prior to their election.

Section 5. An Executive Committee shall be elected by the local representatives of the employees at a meeting to be held to perfect organization and term of office of the Executive Committee shall be as follows: General Chairman and Vice-General Chairman one year from date of election and that of Secretary-Treasurer two years from date of election, and upon completion of these terms they shall be elected for terms of two years thereafter in order to provide a rotating term of two years beginning at the general election held to select the general committee after their first term.

Section 6. The General Chairman and General Secretary-Treasurer will be paid a salary to be prescribed by vote of all the local associations and the General Chairman, Vice General Chairman and General Secretary-Treasurer will be allowed necessary traveling expenses when away from home point on business of the association.

138 Section 7. A local committee for each division or branch shall be elected by each local association and shall consist of two members from each division, as outlined in Section 3, who shall have been in service on that division or at that shop or store for a period of at least one year.

Section 8. The general committeemen shall be elected by a ballot at a regular meeting of each and all of the local associations, to represent their local at a meeting to elect the executive officers, to be held annually. Such

annual meeting will be presided over by the General Chairman of the Executive Committee. Each local association will elect its own local committee which shall be done by ballot at regular meeting. Twenty-five members shall constitute a quorum at such meetings except that a lesser number shall constitute a quorum in any case where such lesser number constitutes a majority of the membership of the local association.

Section 9. The general business of the association and the handling of any questions that may be appealed from local officers will be handled through the general executive committee.

Section 10. The officers of local associations shall consist of Chairman, Vice Chairman, Recording Secretary, Financial Secretary, Grievance Committeeman and three Trustees and a Guard. The duty of the Chairman shall be to preside at all meetings; rule upon all rules of order and procedure and see that all meetings are conducted according to the Laws and Constitution of this association. When not otherwise specified all regular parliamentary rules shall prevail. And that all meetings shall be conducted in an orderly manner.

The duties of Vice Chairman shall be to act in Chairman's place in the absence of Chairman.

The duties of Recording Secretary shall be to keep true and correct minutes of the proceedings of each and every meeting of his local association, and to send to General Secretary correct copy of same. The duties of the Financial Secretary shall be to collect all dues or any other and all monies due local association; keep a correct account of same, and deposit said monies in some local bank designated by the association, and make true

and correct report at each and every meeting of local association of all monies collected since the last meeting and what disposition was made of same. He shall also, not later than the fifth of each month, make complete report to General Secretary showing number of Due Stamps of each and every denomination, together with the total value of same, on hand at the first of preceding month, together with amount received during the month. Failure to comply with this shall be just cause for removal from office.

The duties of Grievance Committeeman shall be to handle all grievances presented by members of the local association according to Rules and Agreements concerning same and report to local each meeting night.

The duties of Trustees shall be to look after the general financial affairs of the Local; see that the Financial Secretary is placed under proper bond; audit the books of Financial Secretary every three months, and act as General Custodian of Funds and Properties of the Local Association.

All officers of the local association shall be honorary, except Financial and Recording Secretaries. The Financial Secretary shall receive as compensation for his services, five per cent (5%) of all monies collected by him. The Recording Secretary as compensation for his services shall be exempt from the payment of any local dues while acting as Recording Secretary.

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Section 11. The term of office of local associations shall be for a period of one year ending March 31st of each year.

Section 12. The regular dues of each member of this association shall be fifty cents (50 cents) per month, payable quarterly in advance and in addition a monthly assessment not to exceed Twenty-five Cents (25 cents) may be made. Suitable membership cards will be issued by the Secretary-Treasurer and posted up to date when dues are paid. Seventy-five per cent (75%) of all funds collected to go to the general funds.

Section 13. Regular meetings of each local association shall be held not later than the second Wednesday of each month at 7:30 P. M.

Section 14. Any disputes or grievances that may arise will be handled in the manner prescribed by the Railway Labor Act. The local committee will handle such questions with local or division officers and in case of failure to reach an agreement or mutual understanding, the case will be referred by the local committee to the General Chairman and said General Chairman will handle the matter on appeal with the general officers of the railroad and may be assisted by the Vice General Chairman and General Secretary-Treasurer in such handling. The local committees will not handle cases on appeal with the general officers, nor will the general committee handle cases with the local officers of the railroads. All local handling will be by the local committees and all handling of cases on appeal will be by the general committee.

In the event that any case is appealed beyond the jurisdiction of the general officers of the railroad, it will be handled in accordance with the provisions of the Railway Labor Act and such appeal shall be signed by the General Chairman and attested by the General Sec-

retary-Treasurer. The General Chairman signing and submitting the appeal in accordance with the provisions of the Railway Labor Act shall have the authority to represent the association before the various duly authorized boards.

Section 15. Changes in these by-laws may be made by two-thirds membership vote of all the local associations, following thirty days' notice in writing. Such proposed changes shall be submitted to the membership of each local association by a letter ballot.

Section 16. The Financial Committee to be composed of Executive Chairman, Executive Vice Chairman and Executive Secretary-Treasurer to handle all financial business of this general association and find ways and means to raise necessary funds.

140 EXHIBIT "B."

The Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.
Houston, Texas, August 31st, 1927.

Clerical Employees, Southern Pacific Lines, in Texas and Louisiana:

The Management of these lines having recognized The Association of Clerical Employees as the Representatives of the Clerical Employees on the Southern Pacific Lines in Texas and Louisiana, we made request on the Management for a wage adjustment, which was granted and will be made effective August 16th, 1927.

This adjustment in salaries was not made as a general increase in wages of all employees, although practically every clerical employee will receive an increase in the distribution of the amount appropriated. It should be considered as a beginning on the part of the Association to bring about more satisfactory differentials in rates of the different positions based on their relative importance, responsibilities, and experience requirements. In working out the distribution of the Award we have endeavored to correct the rates on positions of the same importance where one was found to be considerably lower than the other, and in such cases the higher position was, of course, not granted the same increase as the lower.

The Association has not done all for you which it expected and expects to do, but it takes time to work out questions pertaining to the pay of approximately 2000 employees.

Attached you will find an application blank for membership. It has cost money to handle the affairs of the Association and we trust that you will immediately file your application for Membership in the Association, attaching your check or money order for dues up to January 1st, 1928.

Sign the application blank, attach check and forward to D. D. Wade, Gen. Secy. & Treas., at Room No. 22, Grand Central Depot, Houston, Texas.

THE GENERAL COMMITTEE,
By D. D. WADE,
Gen. Sec'y. & Treas.

141 EXHIBIT "C."

The Association of Clerical Employes, Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, October 1st, 1927.

Clerical Employees, Southern Pacific Lines, in Texas and Louisiana:

The Association of Clerical Employees was officially recognized by the Management of the Southern Pacific Lines, August 6th, 1927, and all matters pertaining to working condition, discipline, and wages will be handled by the Association.

On August 20th, the Management agreed to grant an increase of $100,000.00 effective August 16, 1927, which was distributed to clerical employees by the Association Representatives. This amount was not applied, and should not be considered, as a general increase to all clerical employees, as it was used to adjust the rates on positions based on their relative importance, responsibility, and experience requirements. In working out the distribution of the Award we have endeavored to correct the rates on positions of the same importance which one was found to be considerably lower than the other, and in such cases the higher rated position was, of course, not granted the same increase as the lower one.

Working conditions, overtime rules, etc., will remain the same until such time as the Association Committee draws up a contract under which we expect to retain the present rules and only make such changes as will benefit the employees. Clerks on these Lines have heretofore not had a contract as the present rules are only those made by the United States Railroad Labor Board which the Management applied to clerical employees.

Data is now being collected and as soon as completed, we will endeavor to have the rates of pay of clerical employees at stations and yards adjusted to more nearly conform with the higher rates paid by Connecting Lines. This applies to such points as Houston, Dallas, San Antonio, etc.

As soon as we have completed the details of organization and have the Association on a proper basis at all points it is our purpose to secure a good, substantial, general increase for all clerical employees. It takes time to work out these matters; however, the Association has secured more money for you since it was recognized two months ago than the former Clerks' Organization secured in many years. Think that over.

The Association has just agreed with the Management on substantial increases for Joint Station and Yard Terminal Clerical Forces at El Paso.

We are going to make the Association one which will properly represent the clerks on these lines, but in order to do this we must have your support. We are devoting our entire energies to the cause of the Clerks and in order to have your interests protected it is essential that you become a member of the Association.

Application blank is attached, which I trust you will forward to D. D. Wade, Sec'y-Treas., Room 22, Grand Central Depot, Houston, Texas, with dues to January 1st, 1927.

THE ASSOCIATION OF CLERICAL EMPLOYEES,
By F. C. EHLINGER,
General Chairman.

142 EXHIBIT "D."

(Title Omitted.)

United States of America,
State of Texas,
County of Harris, ss.

C. A. Brandin, being duly sworn, deposes and says:

I am a resident of Houston, Harris County, Texas. I am employed as O. S. & D. Clerk, by the Texas and New Orleans Railroad Company in Houston Local Freight Station. I am a member of the Brotherhood of Railway Clerks, and am Division Chairman for the Brotherhood on the Houston Terminals Division.

As a member of the Brotherhood Committee, I attended a conference, between the Brotherhood Committee and Mr. H. M. Lull, Executive Vice President of the Railroad Company, which was held on September 6, 1927, in the office of the Executive Vice-President. In order to attend the conference referred to, it was necessary for me to absent myself from my duties as O. S. & D. Clerk from about 10 A. M. until about 3 P. M., or about for about four working hours. The cause of my absence was known to the Agent, and permission to be absent was obtained through regular channels. The company did not employ additional help to perform my work during my absence. The company made payroll deduction to cover the four hours loss of time referred to herein.

C. A. BRANDIN.

Sworn to and subscribed before me this 13th day of October, A. D. 1927.

W. B. BATES,
Notary Public, Harris County,
State of Texas.

143 EXHIBIT "E."

(Title Omitted.)

United States of America,
State of Texas,
County of Harris, ss.

E. L. Griffith, being duly sworn, deposes and says:

I am a resident of Houston, Harris County, Texas, I am employed by the Texas and New Orleans Railroad Company in the capacity of Receiving Clerk in the Houston Local Freight Station. I am a member of the Brotherhood of Railway Clerks, and serve as Local Chairman for the Brotherhood in the department in which I am employed.

As a member of the Brotherhood Committee, I attended a conference, between the Brotherhood Committee and Mr. H. M. Lull, Executive Vice-President of the Railroad Company, which was held on September 6, 1927, in the office of the Executive Vice-President. In order to attend the conference referred to, it was necessary for me to absent myself from my duties as Receiving Clerk from about 10 A. M. until about 3 P. M., September 6, 1927, or for about four working hours. The cause of my absence was known to the Agent, and permission to be absent was obtained through regular channels. The company did not employ additional help to perform my work during my absence. The Company made payroll deduction to cover the four hours loss of time referred to herein.

E. L. GRIFFITH.

Sworn to and subscribed before me this 13th day of October, A. D. 1927.

F. W. TURNER,
Notary Public, Harris County,
State of Texas.

144 EXHIBIT "F."

(Title Omitted.)

United States of America,
The State of Texas,
County of Harris, ss.

B. C. Hudson, having first been duly sworn, deposes and says:

I have been Bill and O. S. & D. Clerk in the local freight office of the Texas and New Orleans Railroad Company since January 1, 1927, or thereabouts and have been in the employ of said Railroad Company since April 29, 1926.

On October 14, 1927, at about 11:30 A. M., J. O. McDaniels, Chief Clerk in the Englewood Freight Yards of said Railroad Company at Houston, Texas, came to my desk in the local freight office of the said railroad company at Houston, Texas, and asked me if I was a member of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. In reply I asked McDaniels if he was acting in an official capacity in directing the aforesaid question to me. He said: "How do you get that I am official?" I replied that he was a chief clerk. He did not discuss further the question of his acting in an official capacity but stated that I did not have to answer his question if I did not desire to do so. He further stated

145 that the only thing for me to do was to join the Association of Clerical Employees, as the Brotherhood of Railway and Steamship Clerks was not recognized by the officials of the Texas and New Orleans Railroad Company but that they had shut said

Brotherhood out. He also stated that if myself and others did not join the said Association, it would only be a matter of time until a lot of us were let out. I then stated if that was the case I am the same as out of a job, to which he replied: "I guess so."

(Signed) B. G. HUDSON,

Subscribed and sworn to before me this 17th day of October, A. D. 1927.

(Signed) W. B. BATES,
Notary Public in and for
Harris County, Texas.

146 EXHIBIT "G."

(Title Omitted.)

United States of America,
The State of Texas,
County of Harris.

J. D. Guidry, having first been duly sworn, deposes and says:

I have been in the employ of the Texas and New Orleans Railroad Company since September, 1924, and have been Timekeeper in the Local Freight Office of said Railroad Company in Houston, Texas, since October 1, 1926.

On September 21, 1927, at about 7 A. M., Mr. J. A. Sanders, Local Freight Agent at Houston, Texas, of the said Railroad Company, called me into his office and said to me: "I understand you are devoting quite a bit of your time to the interests of the Brotherhood

of Railway and Steamship Clerks." I asked him what he meant and he replied: "Just what I said." I then asked him in what respect I was devoting too much time to said Brotherhood and to give me a single instance in which I had done so, and he replied: "That is alright." I just want to give a warning."

147 Said Sanders then went on to state that I need not get suspicious of anyone in the office as having reported me since the report had come to him from outside the office.

(Signed) J. D. GUIDRY.

Sworn to and subscribed before me this 17th day of October, A. D. 1927.

(Signed) W. B. BATES,
Notary Public, Harris County, Texas.

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148 RULE TO SHOW CAUSE.

Issued October 24, 1927.

(Title Omitted.)

The President of the United States of America, to W. R. Mann, Greeting:

Whereas, on October 22nd, 1927, an Information charging Contempt and the Order of the Court thereon for Rule to Show Cause was filed in this Court in this cause by H. W. Harper, General Chairman of the System Board of Adjustment of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas

and Louisiana, individually and as the actual and legally designated and elected representative of the railway clerks in the employ of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana, except General Office Employees, et al., against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, and

Whereas, an order was made on said Information by the Honorable J. C. Hutcheson, Jr., Judge of the District Court of the United States for the Southern District of Texas, in words and figures as follows, to-wit:

"In the District Court of the United States for the Southern District of Texas, Houston Division.

Brotherhood Railway Clerks
against Eq. 314.
Texas and New Orleans R. R. Company.

On motion of John H. Crooker and Carl G. Stearns and on the filing of the information of H. W. Harper charging contempt of Court against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, it is ordered that a rule issue to the said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann and each of them to be and appear before this Court on the 4th day of November, A. D. 1927, to show cause, if any they have, why they should not be punished for contempt of Court for violation of the temporary injunction heretofore issued by this Court, on August 3, 1927, in this cause.

J. C. HUTCHESON, JR.,
United States District
Judge."

149 Wherefore, you are hereby commanded to be and appear before this Court on the 4th day of November, A. D. 1927, to show cause, if any you have, why you should not be punished for contempt of Court for violation of the temporary injunction heretofore issued by this Court on August 3, 1927, in this cause.

Herein fail not.

Witness, the Honorable J. C. Hutcheson, Jr., Judge of said Court, and the seal of the District Court of the United States for the Southern District of Texas, at Houston, this 24th day of October, A. D. 1927.

L. C. MASTERSON,
Clerk, United States District Court, Southern District of Texas.

(Seal)

MARSHAL'S RETURN.

Entered Docket.

Received this writ at Houston, Texas, Nov. 3, 1927, and executed at Houston, Texas, Nov. 4, at 7:50 A. M., by delivering to W. R. Mann in person a true copy.

R. A. HARVIN,
U. S. Marshal,
By E. H. HUTCHESON,
Deputy.

150 RULE TO SHOW CAUSE.

Issued Oct. 24, 1927.

(Title Omitted.)

The President of the United States of America, to Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, Greeting:

Whereas, on October 22nd, 1927, an Information charging Contempt and the Order of the Court thereon for Rule to show cause, was filed in this Court in this cause by H. W. Harper, General Chairman of the System Board of Adjustment of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, individually and as the actual and legally designated and elected representative of the railway clerks in the employ of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana, except General Office Employees, et al., against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, and

Whereas, an order was made on said Information by the Honorable J. C. Hutcheson, Jr., Judge of the District Court of the United States for the Southern District of Texas, in words and figures as follows, to-wit:

"In the District Court of the United States for the Southern District of Texas, Houston Division.

Brotherhood Railway Clerk
against Eq. 314.
Texas and New Orleans R. R. Company.

On motion of John H. Crooker and Carl G. Stearns and on the filing of the information of H. W. Harper charging Contempt of Court against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann, it is ordered that a rule issue to the said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann and each of them to be and appear before this Court on the 4th day of November, A. D. 1927,
151 to show cause, if any they have, why they should not be punished for contempt of Court for violation of the temporary injunction heretofore issued by this Court on August 3, 1927, in this cause.

J. C. HUTCHESON, JR.,
United States District
Judge."

Wherefore, you are hereby commanded to be and appear before this Court on the 4th day of November, A. D. 1927, to show cause, if any you have, why you should not be punished for contempt of Court for violation of the temporary injunction heretofore issued by this Court on August 3, 1927, in this cause.

Herein fail not.

Witness the Honorable J. C. Hutcheson, Jr., Judge of said Court, and the seal of the District Court of the United States for the Southern District of Texas, at Houston, this 24th day of October, A. D. 1927.

L. C. MASTERSON,
(Seal) Clerk, United States District
Court, Southern District of
Texas.

MARSHAL'S RETURN.

Entered Docket.

Received this writ Oct. 24, 1927, at Houston, Texas, executed same Oct. 24th, 1927, at Houston, Texas, by serving the Texas & New Orleans R. R. through G. S. Waid, its Vice-Pres. & Gen. Mgr.; serving G. S. Waid and J. G. Torian in person Oct. 26th, 1927, serving H. M. Lull in person with a true copy of this writ.

R. A. HARVIN,
U. S. Marshal,
By E. H. HUTCHESON,
Deputy.

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152 DEFENDANT'S EXCEPTIONS AND MOTION TO STRIKE OUT INFORMATION CHARGING CONTEMPT.

Filed Nov. 4, 1927.

(Title Omitted.)

Come now Texas and New Orleans Railroad Company, H. M. Lull, Executive Vice-President, G. S. Waid, Vice-President and General Manager, J. G. Torian, Assistant to Vice-President and General Manager, and W. R. Mann, Assistant Superintendent of Texas and New Orleans Railroad Company, and demur and except to the information heretofore filed herein by one of the plaintiffs, H. W. Harper, and move the Court to dismiss and strike out said information because the same contains and presents no cause of action or ground of complaint

against them, or any of them, and wholly fails to allege any facts showing or tending to show that they, or any of them, have been guilty of contempt of Court with respect to the restraining order or temporary injunction heretofore entered herein.

I.

Said parties demur and except to subdivision I of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

II.

Said parties demur and except to subdivision II of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

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III.

Said parties demur and except to subdivision III of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

IV.

Said parties demur and except to subdivision IV of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

V.

Said parties demur and except to subdivision V of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

VI.

Said parties demur and except to subdivision VI of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

VII.

Said parties demur and except to subdivision VII of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the action of said defendants, or

some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

154 VIII.

Said parties demur and except to sub-division VIII of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

IX.

Said parties demur and except to subdivision IX of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged do not and cannot constitute any violation of said restraining order or temporary injunction.

X.

Said parties demur and except to subdivision X of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

XI.

Said parties demur and except to subdivision IX of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged, do not and cannot constitute any violation of said restraining order or temporary injunction.

XII.

Said parties demur and except to subdivision XII of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said de-
155 fendants, or some of them, therein alleged, do do and cannot constitute any violation of said restraining order or temporary injunction.

XIII.

Said parties demur and except to subdivision XIII of said information or complaint and move that the same be stricken out because it is apparent from the allegations thereof that the actions of said defendants, or some of them, therein alleged do not and cannot constitute any violation of said restraining order or temporary injunction, and, further, because the allegations thereof are so vague and indefinite that they constitute no allegation or representation of any definite or material fact whatsoever.

Premises considered, said parties pray that each and all said exceptions and motions be sustained and that said information or complaint, and each and every paragraph or count thereof, severally, be stricken out and dismissed.

BAKER, BOTTS, PARKER & GARWOOD,
J. H. TALLICHET,
CALVIN B. GARWOOD,
Attorneys for Texas & New Orleans Railroad Company, H. M. Lull, Executive Vice-President, G. S. Waid, Vice-President and General Manager, J. G. Torian, Assistant to Vice-President and General Manager, and W. R. Mann, Assistant Superintendent of Texas & New Orleans Railroad Company.

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156 ANSWER OF DEFTS T. & N. O. R. R. CO., ET AL., TO INFORMATION CHARGING CONTEMPT, ETC.

Filed Nov. 4, 1927.

(Title Omitted.)

Come now Texas and New Orleans Railroad Company, H. M. Lull, Executive Vice-President, G. S. Waid, Vice-President and General Manager, J. G. To-

rian, Assistant to Vice-President and General Manager, and W. R. Mann, Assistant Superintendent of Texas and New Orleans Railroad Company, and for answer in this behalf, if any answer be required and in the event and only in the event that its exceptions and motion to strike out heretofore filed herein be overruled and excepting to the overruling of any and all of said exceptions and motion to strike out, file this, their answer, to the information or complaint heretofore filed herein by H. W. Harper, one of the plaintiffs herein, and represent and show to the Court:

They admit the filing in this proceeding of a bill for injunction, the rendition by the Court of its opinion, and the entry by the Court of its temporary injunction or restraining order substantially as set out in said complaint, but for greater certainty they refer to the original bill of complaint, opinion of Court, and the temporary injunction or restraining order heretofore entered by the Court as the same appear of record in this cause.

They deny each and every allegation of said information or complaint, save and except as the same may be hereafter admitted, and they especially deny that they, or any of them, have, in any way, by word or deed, violated the temporary injunction or restraining order heretofore entered herein, and they further deny that they, or any of them, have, directly or indirectly, in any way or manner, interfered with, influenced, intimidated or coerced the plaintiffs or any of the clerical employees of said Texas and New Orleans Railroad Company with respect to their free and untrammeled right of selecting or designating their representatives

for the purpose of considering or deciding any
157 or all disputes between said clerical employees and said Railroad Company, or in the free and untrammeled right of self-organization of said employees.

I.

Defendants expressly deny that they knowingly, wilfully or with unlawful intent or at all, ignored, violated, disobeyed or disregarded the temporary injunction heretofore entered herein and they expressly deny that they, or any of them, combined, conspired or confederated among themselves or with other officers, servants or agents of said Texas and New Orleans Railroad Company to in any way violate said injunction.

They allege that on August 5, 1927, F. C. Ehlinger, as General Chairman, A. G. Baker, as Vice-General Chairman, and Douglas D. Wade, as General Secretary-Treasurer of the "Association of Clerical Employees of Southern Pacific Lines in Texas and Louisiana", presented to J. G. Torian, as Assistant to Vice-President and General Manager, G. S. Waid, of said Railroad Company, certain papers purporting to be the written authorizations of materially more than a majority of the clerical employees of said Railroad Company other than general office employees. That the said J. G. Torian received said purported authorizations and caused the same to be carefully and thoroughly checked. That from and by said check and from and by the examination of said purported authorizations the said J. G. Torian did, for and in behalf of said Railroad Company, determine and decide justly and fairly that a total of 929 of the clerical employees of the character described in the proceedings in this

suit had authorized, and did authorize, the said Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana, of which the said Ehlinger, Baker and Wade were and are officers, to represent them in all matters in which the so-called Brotherhood of Railway Clerks had theretofore claimed to represent them. That each and all said authorizations stated in substance that the signers thereof did not desire the said Brotherhood of Railway Clerks to represent them in said matters.

That the said J. G. Torian, acting for and in behalf of said Railroad Company, thereupon, having
158 determined fairly and lawfully that the said Association and its officers were entitled to represent and speak for an [and] in behalf of the clerical employees, wrote to the said F. C. Ehlinger, as General Chairman, a letter in substance as set out in subdivision I of the said information, and thereupon advised the several superintendents and other parties entitled to information with respect thereto of his action by letter substantially as set out in said subdivision I of said information.

That thereupon, pursuant to the general practice of said Railroad Company in such matters, the said parties addressed, made public the fact of said recognition, the Superintendent at El Paso doing so by communication substantially as set out in said information, and other superintendents and officers charged with such duty following substantially the same course.

Defendants deny that the writing and forwarding of said letter of August 6, 1927, or the dissemination of the information therein contained by means of said letter of August 9, 1927, or the making public to subordinates, employees and others, was unlawful or in vio-

lation of the injunction of this Court, but they allege on the contrary, that the said action was the usual, customary and proper action to be taken by said officers in the premises and in all similar cases. That said letters were written, transmitted and made public to the extent that they were made public in entire good faith and in the necessary discharge of the duties of the several officers of said Railroad Company. They allege that the writing of said letters and the distribution thereof and the dissemination of information therein contained was not for the purpose of interfering with, influencing or coercing any or all of the clerical employees of the said Railroad Company with respect to their self-organization, or of interfering with, influencing or coercing any or all of the said clerical employees with respect to the designation of their representative or representatives to act for or in their behalf in connection with disputes between said Railroad Company and said clerical employees.

They deny that a majority of the said clerical employees in truth and in fact desired the organ-
158a ization known as the Brotherhood of Railway Clerks, etc., or the officers thereof, to act for them or in their behalf, and they expressly deny that they have, or had, information to any such effect. They allege, on the contrary, that said Brotherhood of Railway Clerks never had a majority of the clerical employees of said Railroad Company and, on information and belief, they allege that a majority of said clerical employees have never authorized said Brotherhood of Railway Clerks, etc., to represent them, but if at any time the said Brotherhood of Railway Clerks, etc., has had papers purporting to be authorizations of a majority of said clerical employees then defendants allege,

on information and belief, that the same were obtained by misrepresentation and fraud.

They allege that all of the other actions taken by said Railroad Company and its officers alleged in said information or complaint and not expressly denied herein, were taken and done pursuant to the said finding of the said Railway Company, through its proper officer, that the said Association of Clerical Employees, hereinbefore referred to, was and is authorized to represent a majority of the said clerical employees.

II.

They allege that they, or some of them, on or about August 20, 1927, entered into an agreement with the said F. C. Ehlinger as General Chairman, A. G. Baker as Vice-Chairman and Douglas D. Wade as General Secretary-Treasurer of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana, of the purport of the substantial copy of said agreement set forth in said information, and they allege further that said agreement was made with said parties in entire good faith and has been and is being performed. They deny that said agreement is anything other than as appears on its face, or is for any other or different purpose than appears on its face.

They deny that the amount of money agreed to be used in increasing the compensation of the clerical employees was unjustly, unreasonably or unfairly distributed among the said employees and they expressly deny that chief clerks or similar officers received the greater part thereof. They allege, on the con-
159 trary, that the said sum was use [used] for the purpose of equalizing and adjusting com-

pensation of various clerical employees whose compensation was claimed by the said Association to be too low or disproportionate to the compensation of men performing similar services, and they allege that said sum was so distributed for said purpose. They allege that increases of a few cents per day were made at the request of the said Association to the end that employees might receive pay in round figures per day and not in odd cents.

They allege that they, or some of them, had the correspondence set out in subdivision II of said information with various officers or employees of the United States Board of Mediation, but they deny that in dealing with the Association of Clerical Employees, as aforesaid, they have violated any statute or law whatsoever, or the injunction of this Court, and they allege that any and all right and authority of said Board of Mediation had terminated prior to the recognition of the Association of Clerical Employees on August 6, 1927, and to the making of the agreement aforesaid bearing date August 20, 1927.

III.

They allege that on or about September 6, 1927, a committee consisting of H. W. Harper and others called on H. M. Lull, Executive Vice-President of Texas and New Orleans Railroad Company, and requested him to recognize them as the representatives of the clerical employees and that the said H. M. Lull declined to examine any papers which may have been offered him at said time, and declined and refused to oferrule [overrule] or supercede the action of J. G. Torian and of other officers of the Company in the premises.

They allege that the said H. M. Lull acted in the premises within his legal rights and those of said Texas and New Orleans Railroad Company without any intention whatsoever of violating, and without violating the restraining order hereinbefore referred to.

IV.

They allege that a committee consisting of said Harper and others called on A. D. McDonald, President of said Texas and New Orleans Railroad Com-
160 pany, and that the said A. D. McDonald declined to interfere with action heretofore taken by H. M. Lull and other officers of said Company.

V.

They allege that on or about September 28, 1927, the said J. G. Torian, Assistant to the Vice-President and General Manager, had a meeting at El Paso with F. C. Ehlinger, A. G. Baker and Douglas D. Wade, and, in addition with an officer of the Pacific System of the Southern Pacific Company and certain representatives of the Brotherhood of Railway and Steamship Clerks, etc., representing employees on said Pacific System, and that W. R. Mann, Assistant Superintendent of said Texas and New Orleans Railroad Company, excluded the said Harper from said meeting. They allege that the said W. R. Mann so excluded the said Harper at the direction of J. G. Torian and for the sole reason that the said Harper was not wanted by said Texas and New Orleans Railroad Company at said meeting because the Association of Clerical Employees had theretofore been lawfully and properly recognized as repre-

senting the clerical employees of said Railroad Company, and could not discuss or consider the claims of said Harper at every or any meeting of the character of that at El Paso. That there was nothing which they had to say to the said Harper in said meeting and nothing with respect to which they desired to hear from the said Harper at the said meeting. They deny that said exclusion was for any purpose of influencing or intimidating any employees whatsoever, or that it constituted a violation of the injunction or restraining order heretofore entered herein.

VI.

They deny that said Texas and New Orleans Railroad Company prepared, encouraged to be prepared, or aided in preparing the constitution and by-laws of the Association of Clerical Employees at El Paso and elsewhere. They allege that if any copies of said constitution and by-laws were prepared at El Paso, said action was solely that of employees members of said Association, for distribution among local members of the Association. They are without information whether or not the paper material and a mimeograph machine, or any of them, owned by the Railroad Company were used in said work, but they had and have no objection to such use by such employees, provided the same was
161 without materially injuring the property of said Railroad Company.

VII.

They deny that any circulars whatsoever of the Association of Clerical Employees have been distributed with the knowledge of the said Railroad Company or any of its officers by railroad mail and they are informed and believe that the circulars referred to in

Subdivision VII of said information were prepared by Douglas D. Wade solely as General Secretary and Treasurer of the Association of Clerical Employees and were distributed by United States Mail with postage prepaid. They allege that if any of said circulars have been transmitted or received by railroad mail without payment of postage, then that such circulars were "planted" by officers or members of the Brotherhood of Railway Clerks, etc. They deny any and all part in the preparation, transmission or delivery of said circulars, and they especially deny that there was contained in said circulars, directly or indirectly, any suggestion or intimation that they were promulgated by defendant Railroad Company or its officers.

VIII

They deny that they have furnished an office or headquarters in Room 22, Grand Central Depot Building, Houston, Texas, or elsewhere, to the Association of Clerical Employees, or its officers. They allege, on information and belief that Douglas D. Wade, General Secretary and Treasurer of the Association of Clerical Employees and a clerical employee of said Texas and New Orleans Railroad Company, is employed in said Room 22, Grand Central Depot Building, Houston, Texas, and has received his mail or some of his mail at said address. They have interposed no objection to the said Douglas D. Wade receiving his mail at said address and have no purpose of interposing any such objection. They are informed and believe and on information and belief represent, that the said Douglas D. Wade, General Secretary and Treasurer as aforesaid, now receives his mail at another address not on the premises of said Railroad Company and they assume that he does so for his own convenience.

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IX.

They allege that on or about September 6, 1927, one Brandin and one Griffith, clerical employees who are members or who are claimed to be members of the Brotherhood of Railway Clerks, were absent from their duties for about four hours for the purpose of calling on H. M. Lull, Executive Vice-President of said Railroad Company, in respect to business, or alleged business, of the said Brotherhood of Railway Clerks, and they allege further that inasmuch as said parties rendered no service to said Railroad Company during said period they were not paid for same. They allege that up to the present time they have made no deduction whatever from the pay of officers of the Association of Clerical Employees on account of whatever, if any, time may have been lost from the discharge of their duties. They allege that it is optional with said Company and its officers whether they will make deductions or not make deduction for time lost by employees from their duties.

X.

They allege that H. W. Harper, having rendered no service to said Railroad Company for a long period of time, to-wit: more than four years, they have dropped him from the roster of employees and have taken up or issued instructions that an annual pass issued to him be taken up. They also allege that an annual pass heretofore issued to the mother of the said Harper has been similarly taken up or ordered taken up.

They allege that said action is within the legal rights of the said Railroad Company and its officers and was not intended to violate and did not violate said temporary injunction.

XI.

They allege that one John W. Walker, having rendered no service to said Railroad Company for approximately two years, has been similarly dropped from the roster and is no longer considered an employee of said Railroad Company.

XII.

They deny the allegations of subdivision XII of said information and allege that they have not frowned upon, discouraged or attempted to keep the members of the Brotherhood of Railway Clerks from attending to any business or discussions with respect to encouraging or approving of said clerical employees joining and remaining members of said Brotherhood, save and except as such discussions may have involved or been calculated to involve neglect of duties of said clerical employees during working hours. They admit that they prefer that said clerical employees shall attend to the duties for which they are paid during working hours rather than to the affairs of the said Brotherhood of Railway Clerks.

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XIII.

They deny each and all of the allegations of subdivision XIII of said information and deny that they have, directly or indirectly, in letter or spirit, violated the restraining order or temporary injunction heretofore entered herein.

Premises considered, said parties pray that the rule heretofore entered herein be discharged.

Respectfully submitted,

BAKER, BOTTS, PARKER & GARWOOD,
J. H. TALLICHET,
CALVIN B. GARWOOD,
Attorneys for Texas and New Orleans Railroad Company, H. M. Lull, Executive Vice-President, G. S. Waid, Vice-President and General Manager; J. G. Torian, Assistant to Vice-President and General Manager, and W. R. Mann, Assistant Superintendent of Texas and New Orleans Railroad Company.

164 State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared H. M. Lull, who, being duly sworn, deposes and says:

I am Executive Vice-President of Texas and New Orleans Railroad Company, and was at all the times referred to in the foregoing answer. I am familiar with the contents thereof, and the same are true, except as alleged on information and belief and as to such matters I verily believe them to be true.

H. M. LULL.

Subscribed and sworn to before me on this the 22nd day of November, A. D. 1927.

GEO. HOOP,
(Seal) Notary Public in and for
Harris County, Texas.

165 State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared G. S. Waid, who, being duly sworn, deposes and says:

I am Vice-President and General Manager of Texas and New Orleans Railroad Company and was at all the times referred to in the foregoing answer. I am familiar with the contents thereof and the same are true, except as alleged on information and belief and as to such matters I verily believe them to be true.

G. S. WAID.

Subscribed and sworn to before me on this the 4th day of November, A. D. 1927.

M. NICHOLSON,
(Seal) Notary Public in and for
Harris County, Texas.

State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared J. G. Torian, who, being duly sworn, deposes and says:

I am Assistant to the Vice-President and General Manager of Texas and New Orleans Railroad Company and was at all the times referred to in the foregoing answer. I am familiar with the contents thereof and the same are true, except as alleged on information and belief, and as to such matters I verily believe them to be true.

J. G. TORIAN.

Subscribed and sworn to before me on this the 4th day of November, A. D. 1927.

O. G. KEHRER,
(Seal) Notary Public in and for
Harris County, Texas.

186 State of Texas,
County of Harris.

Before me, the undersigned authority, on this day personally appeared W. R. Mann, who, being duly sworn, deposes and says:

I am Assistant Superintendent of Texas and New Orleans Railroad Company and was at all the times referred to in the foregoing answer.

I am familiar with the contents thereof in so far as the same affect me, and the same are true.

W. R. MANN.

Subscribed and sworn to before me on this the 4th day of November, A. D. 1927.

O. G. KEHRER,
(Seal) Notary Public in and for
Harris County, Texas.

Indorsements: No. 314 in Equity. United States District Court, Southern District of Texas, Houston Division. Brotherhood of Railway Clerks, et al., vs. Texas and New Orleans Railroad Company, et al. Answer of Defts. T. & N. O. R. R. Co., et al., to Information Charging Contempt, etc. Filed 4th day of Nov., 1927. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

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167 AFFIDAVIT OF H. W. HARPER CONCERNING ALLEGED AUTHORIZATIONS SUBMITTED BY DEFENDANTS.

Filed November 21st, 1927.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes H. W. Harper, your petitioner or informant, and respectfully represents to this Court that while the committee, namely, J. R. Sexton, J. G. Torian and H. W. Harper, appointed by this Court to count the alleged authorizations submitted by the defendant Texas and New Orleans Railroad Company as authorizations to the Association of Clerical Employees to represent clerical employees on the Southern Pacific Lines in Texas and Louisiana, actually counted 937 signatures attached to said alleged authorizations, the large majority of said signatures should not be counted or considered by this Court as authorizations to said Association on August 6, 1927, to represent the clerical employees on the Southern Pacific Lines in Texas and Louisiana and accordingly that the defendants, Texas

and New Orleans Railroad Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann were not justified on said date of August 6, 1927, in granting recognition to the said Association as the officially designated representative of said clerical employees and in
168 refusing to continue to recognize the Brotherhood as the said officially designated representatives of said clerical employees nor in doing the other matters and things set forth in the petition or information heretofore filed therein on October 22, 1927, and by reason thereof said defendants are in contempt of this Court for violation of the temporary injunction granted herein by this Court on August 3, 1927. In substantiation of the foregoing representation, your petitioner or informant respectfully shows the Court as follows:

Attached hereto and made a part hereof are separate tabulations for each division of said Texas and New Orleans Railroad Company and a recapitulation covering all divisions of said railroad, which tabulations and recapitulations show the names of the signers of said alleged authorizations whose authorizations should be not counted as proper authorizations to said Association on August 6, 1927, to represent said clerical employees as a class and the specific reasons therefor.

The Court's particular attention is directed to the fact that there are five duplications of signatures, i. e., five persons' names appear signed twice to alleged authorizations, and that at least six of the signatures are of persons not in the service of the defendant, Texas and New Orleans Railroad Company, on August 6, 1927, and accordingly that there are to start with only 926 signatures of persons in the employ of the said rail-

road on August 6, 1927, or less than a majority of the total of 1855 clerical employees alleged by said defendants to be in the class of employees involved herein.

The Court's further particular attention is directed to the fact that it would seem beyond dispute, even by the defendants, that the alleged authorizations from the following who are obviously not clerical employees of the class involved should not be counted:

Truck drivers	6
Freight trucker	1
Janitors	2
Elevator operator	1
PBX Operators	3
Gulf, Colorado & Santa Fe employee	1
Lake Charles & Northern R. R. Co. employees	7
Assistant Agent, Local Frt. Sta., Ft. Worth	1
Telegraph operator	1
Assistant to Terminal Freight Agt., N. O.	1
Dining Car employees	7
Creosote Works employees	12
Auto messenger	1
Baggage Agents O.	2
Total	46

169 Deduction of the signatures of the foregoing 46 persons from the 926 signatures referred to hereinabove would leave only 880 signatures or much less than the required majority.

In addition to the foregoing the 110 personal office employees whose signatures appear attached to the alleged authorizations do not come within the class of employees involved by reason of long established prece-

dents excluding such employees of the Texas and New Orleans Railroad Company from the class of employees involved and by reason of Article I of the "Rules" which by agreement between said class of employees and said railroad were put into effect by said railroad on July 1, 1922, and are still in effect (see wage agreement between said railroad and said association entered into on August 20, 1927, and set forth at page 32 of the information filed herein on October 22, 1927, and also see letter of J. G. Torian to Ralph J. King, former general chairman of the Brotherhood under date of June 21, 1923, attached hereto.)

The Court's further particular attention is directed to the fact that 422 of the signatures or more than 40 per cent of the total signatures do not bear any dates whatever, nor is there anything appearing upon them to indicate that they were signed prior to August 6, 1927. Your petitioner or informant is informed and believes, and accordingly so alleges upon information and belief, that many of said signatures were obtained subsequent to August 6, 1927, and accordingly should not be considered. It has not been possible for your petitioner or informant to develop the actual facts concerning the actual dates of said signatures because of the reluctance and apparent fear of said employees to be interviewed and answer questions concerning said dates of signature, which said reluctance and fear your petitioner believes, and accordingly so alleges, to be due to the circular letters sent out by F. C. Ehlinger, Chairman of said Association at the suggestion, direction and/or dictation of said defendant J. G. Torian under date of November 5, 1927, to all said clerical employees, which contained a statement to the effect that this Court had ordered that the Brotherhood and its

representatives should not approach or talk to any such signer of an authorization and instructing that
170 any such attempts by the Brotherhood or its representatives should be reported to said Ehlinger, and while the Brotherhood issued a circular letter pointing out that this Court had not issued any such order, the impression appears to have remained with said employees that the instructions contained in Ehlinger's said circular letters had emanated from said defendant, J. G. Torian, and they feared to disobey said instructions.

Your petitioner or informant also directs the Court's attention to the fact that only 186 of the alleged authorizations designate the Association as the representative of the signers or even so much as mentioned the name of the association; 106 of them do not designate anyone whatever as representative of the signers but only state that the signers do not care to be represented by the Brotherhood; and the remaining 645 (84 of which signers expressly say that they are not connected with any labor organization) designate some individual to represent them without so much as mentioning the association or giving any indication that the signers desired representation by the Association or that the signers even knew that said designated individuals were in any way connected with the Association, if in fact they were so connected. A tabulation showing how the various signers designated representatives is attached hereto and made a part hereof.

The names of some 52 signers do not appear upon the current seniority rosters for the Dallas, Lafayette, Austin, Victoria, Houston General Shops and Houston Terminal Divisions of said Texas and New Orleans Railroad Company and your petitioner or informant or

his representatives have not had the time or opportunity to check the July-August payrolls of said Texas and New Orleans Railroad Company for said divisions. A check of such payrolls of other divisions revealed that the name of some 6 persons had been included among the authorizations counted who were not in the service of said Texas and New Orleans Railroad Company on August 6th, 1927.

Seventy-six (76) of said employees who have signed the alleged association authorizations have subsequently to the dates of their said signatures but prior to August 6, 1927, signed authorizations to the Brotherhood to represent them and 16 of said signers did, prior to August 6, 1927, sign specific retractions of authorizations theretofore given to said association to represent them.

As will appear from the recapitulation at-
171 tached hereto, a total of 912 out of the 937 alleged authorizations should be eliminated and disregarded for the reasons stated hereinabove and on said recapitulation.

H. W. HARPER,
By FULBRIGHT, CROOKER & FREEMAN,
His Attorneys.

United States of America,
The State of Texas,
County of Harris.

H. W. Harper, being duly sworn on oath says that he has read the foregoing affidavit and that the same is true in substance and in fact and that he has actual personal knowledge as to the truth of the facts set forth in said affidavit except as to those certain facts alleged

upon information and belief and as to those facts he is informed and believes they are true and therefore says they are true to the best of his knowledge, information and relief.

H. W. HARPER.

Sworn to and subscribed before me this the 21st day of November, A. D. 1927.

CARL G. STEARNS,
(Seal) Notary Public in and for Harris County, Texas.

Recapitulation of Division Sheets.

Duplicate signatures (names appearing twice on lists)	5
Employes not in service as of August 6, 1927	6
Truck Drivers	6
Freight Trucker	1
Janitors (including 1 negro)	2
Elevator Operator	1
P. B. X. Operators (Telephone switchboard operators)	3
Telegraph Operator	1
Santa Fe Employe (Employed by G. C. & S. F. Railroad at Ft. Worth)	1
Lake Charles & Northern Railroad Employes	7
Assistant Freight Agent (Ft. Worth)	1
Assistant to Terminal Freight Agent—New Orleans	1
Baggage Agents	2
Auto Messenger	1
Dining Car Department employes	7
Creosote Works employes	12

Messenger Boys	32
Personal Office Forces	110
Authorizations not dated	422
Authorizations not naming any representatives	90
Authorizations naming individuals only as representatives	661
Authorizations from employes whose names do not appear on rosters	52
Authorizations from persons, who later signed retractions before August 6th	16
Authorizations from persons who signed authorizations with Brotherhood after having signed with the Association, but prior to August 6th, 1927	76
Total Eliminations (less duplications of names eliminated for more than one reason)	912

Lafayette Division.

Total number of signatures counted (86).

All signatures appearing on the lists from the Lafayette Division, except that of L. J. Thibeaux, should be eliminated because they authorize representation by H. V. Mielly, an individual, and there is nothing appearing on the documents which authorizes representation by the Association, nor is said association even mentioned ..... (85)

For more particular reasons the following should be eliminated:

Persons not coming within the class of employes involved:

Employes on the LC&N Railroad:

C. B. McGehee, C. Cole,
James A. Ford, Geo. W. Ford,
E. V. Thomas, F. J. Jordon
Mamie L. McKenzie, (7)

Messenger Boys:

M. O. Matthews, L. W. Pellerin
Marcel Duhon, (3)

Duplicate signature (name appears twice on list)

L. J. Thibeaux. (1)

Employes signing with Brotherhood, prior to August 6th, but subsequent to having signed with Association:

J. F. Landry signed with association 6/28 with BRC 7/13.

173 Joe Lombardo signed with association 6/28 with BRC 7/14.

Clarence Savoy signed with association 6/17 with BRC 8/1.

D. P. Comaux signed with association 6/17 with BRC 8/1.

F. L. Martin signed with association 6/15 with BRC 6/30.

F. R. Connor signed with association 6/15 with BRC 7/3.

Personal Office Force:

W. L. Domengeaux—Division Accountant,
P. C. Bennett—Chief Clerk to Div'n Engineer,
F. G. Lindsay—Chief Timekeeper,
E. R. Beadle—Personal stenographer,

Paul H. Declouet—Personal stenographer,
H. V. Mielly—Chief Clerk to Sup't.,
P. H. Lalanne—Chief Clerk—MP&C,
A. H. Hayes—
E. R. Harrell—Supt's. Secretary,
Earl Bourg—Personal stenographer,
H. P. Melancon— (11)

The following names do not appear on current seniority rosters:

John J. Bibbins A. Lee Bourg, (2)

July-August payroll has not been checked.

Total elimination (less duplication of names eliminated for more than one reason).....(85)

Dallas Division.

Total number of signatures counted—(138).

The signatures on the authorizations from the Dallas Division should be eliminated because they authorize representation by F. C. Ehlinger, P. A. Caldwell and A. Donohue, all individuals in certain instances, while in other instances authority to represent is not delegated to anyone to represent signers, but the signers merely say they do not desire the Brotherhood to represent them. There is nothing appearing on any of the documents to indicate that authority has been extended to the Association to represent employes, the Association being in no manner mentioned on any sheet.

G. B. Wynn authorized A. Donohue to represent him, (1)

W. G. Nash authorized representation by P. A. Caldwell individually,

Gertrude Williams authorized representation by P. A. Caldwell (2)

The following did not authorize any one to represent them:

Bessie May Skinner,	Carl Johnson,	
J. R. Norman,	H. A. Blalock,	
C. B. Elliot,	J. D. Moss,	
W. D. Ratliffe,	C. W. Shaunfield,	
L. L. Redman,	J. H. Dinkins,	
R. L. Hatch,	J. H. Miller	
Claude G. Dumas,	J. A. Tucker,	
F. W. Borders,	O. L. McDuffie,	(16)

The other 119 signers authorized representation by F. C. Ehlinger, individually— (119)

For more particular reasons the following names should be eliminated:

Persons not coming within the class of employes involved:

A. H. Hill—Assistant Agent Ft. Worth Freight Station. (1)

T. B. Kemp—Baggageman, Ft. Worth, account Santa Fe Employe. (1)

174 Messenger Boys:
B. J. Donaho, J. R. Duke,
R. L. Hutchis, (3)

Personal Office Force:
Bessie May Skinner—Personal Staff,
F. C. Ehlinger—Chief Clerk,
A. T. Turner—Chief Timekeeper,
A. E. Mahan—Superintendent's Secretary,
J. T. Goodwin—File Clerk,
M. L. Carlstone—Assistant Chief Clerk,
Mrs. M. L. Landrum—Personal Staff,
H. C. Dillingham—Chief Clerk to Division Engineer,
B. L. Thrasher—Division Accountant,
C. J. Dietrich—Chief Clerk MP&C,
J. A. Townes—Chief Clerk, Freight Station—Ft. Worth, (11)

Employes from whom Brotherhood secured signatures prior to August 6 but subsequent to signing association authorizations:
C. W. Schaunfield, G. B. Wynn, Jr.
H. H. Lummus, J. E. Kraft,
Otto Maas, M. P. Taylor.
L. L. Redman, W. P. Winningham,
Kate Curry, (9)

The following signatures were not dated:
Earl Johnson, O. L. McDuffie, C. B. Elliot, (3)

The following names do not appear on January 1, 1927, seniority rosters:

Clark G. Dumas,	Earnest Allen,
J. H. Pankey,	R. L. Hutchis,
Joe Baldridge, Jr.,	M. C. Jones,
E. A. Horton,	B. J. Donaho,
H. M. Cloud,	O. W. Williams,
Guy Tatum,	Jack Wilson, Jr.,
G. W. Borders,	W. E. Brittain,
Carl Johnson,	J. R. Duke,
S. A. Caul,	T. B. Kemp, (18)

July-August payrolls have not been checked.

Total eliminations (less duplication of names eliminated for more than one reason) .....(138)

Houston General Shops.

Total Number of Signatures Counted (54).

All names on the attached authorizations from the General Shops, with the one exception of H. G. Meiselback, should be eliminated because they authorize representation by G. E. Garrett, an individual, and there is nothing appearing on the authorizations to indicate that the Association was authorized to represent the signers and in fact the Association is not even mentioned— (53)

For more particular reasons the following should be eliminated:

Persons not coming within the class of employes involved:

Personal Office Force:
E. A. Unsworth—Stenographer,
J. B. Cuilla—File Clerk.
Mamie Murray—Stenographer,
C. L. Clark—Record Clerk,
Hugh Derr—Head Clerk,
J. W. F. Leick—Valuation Accountant,
J. D. Rooke—Chief Clerk.
A. G. Baker—Shop Accountant, (8)

175 Messengers:
Leslie Hancock—Messenger,
Martin Kopinitz—Messenger,
Sterling Gandy—Messenger,
James L. Booker—Messenger,
W. T. Finck—Messenger (5)

The following should be eliminated because upon information and belief, they signed Brotherhood authorizations subsequent to date upon which they signed Association authorizations but prior to August 6th, 1927:

R. H. Booker, signed Brotherhood authorization June 24th.
E. H. Badrow, signed Brotherhood authorization June 24th.
Frank Hamond, signed Brotherhood authorization June 24th.
R. N. Miller, signed Brotherhood authorization June 24th.
(Association signatures these men not dated) (4)

The following names are dated as shown:

H. G. Meiselback—August 4th.
J. E. Blakeslee—June 3rd.
H. M. Goodson—June 3rd.
Homer L. Wood—June 3rd.
A. C. Casey—June 3rd.
A. Mitchell—June 3rd.
L. J. Brunner—June 3rd.
W. E. McCullar—June 3rd.
The other 46 names are undated. (46)

The following names do not appear on the January 1, 1927, seniority rosters:

E. W. Clappert—Caller.
W. E. McCullar—Caller.
C. C. Casey—Caller.
James L. Booker—Caller.
W. T. Finck—Messenger. (5)

July-August, 1927, payrolls have not been checked.

Total eliminations (less duplications of names eliminated for more than one reason)..... (53)

Austin Division.

Total Number of Names Counted—(33).

All names appearing on the attached authorizations from the Austin Division, except those of G. T. Meadows, W. W. Beal, W. E. Turner, C. M. Collier, J. O. Karels, W. R. Kendall, Edw. J. Simpson, A. N. S. Patrick and L. W. Newman,

should be elimnated because there is nothing to show that they authorized representation by the Association, nor in fact by anyone else but the s.gners only state that they do not care to be represented by the Brotherhood— (24

For more particular reasons the following should be eliminated:

Persons who do not come within the class of employes involved:

Personal Office Force:

D. B. Barrow—Assistant Chief Clerk to Superintendent.
W. E. Turner—Division Accountant.
W. W. Beal—Division Engineer's Stenographer.
L. W. Newman—Stenographer.
J. R. Russell—Chief Timekeeper.
Simon Cohn—File Clerk.
J. S. Eross—Chief Clerk to Superintendent.
176 G. F. Wessels—Trainmaster's Clerk.
W. S. Jester—Chief Clerk Local Freight Office. (9)

Signed with Brotherhood with signature dated while association signatures bear no date.

A. J. Peters, signed with Brotherhood June 4th.
Sam Nunnelee, signed with Brotherhood June 14th.
Philip O. Blingston, signed with Brotherhood June 14th.
Sam Griffin, signed with Brotherhood June 14th.
H. T. Parker, signed with Brotherhood June 14th. (5)

The following names are dated as shown:

C. M. Collier—June 29th.
J. O. Karels—June 29th.
W. R. Kendall—June 29th.
Edw. J. Simpson—
A. N. S. Patrick—June 29th.
L. W. Newman—June 29th.

The other 27 names are not dated— (27)

The following names do not appear on seniority rosters:

Edward W. Simpson, Philip O. Bingston,
H. T. Parker. (3)

July-August 1927, payrolls have not been checked.

Total eliminations (less duplications of names eliminated for more than one reason) .....(28)

Victoria Division.

Total number of signatures counted .....(66)

All signatures on the attached authorizations from the Victoria Division should be eliminated because there is nothing appearing on the documents which extends authority to the Association or to anyone to represent the signers, but the signers only state that they do not care to be represented by the Brotherhood. (66)

For more particular reasons, the following should be eliminated:

Persons not coming within the class of employes involved:

Personal Office Force:

R. A. Newberry—Chief Timekeeper.
H. L. Sims—Personal Stenographer.
C. McIntosh—Chief Clerk to Div'n. Engineer.
J. T. Schumach—Chief Clerk to Sup't.
J. L. Young—Ass't Chief Clerk.
H. M. Lacour—Division Accountant.
A. R. Pickett—Steno. to Ass't. Supt.
Wm. Stoubesand—File Clerk.
S. A. Burchers—Trainmaster's Clerk.
V. K. Hrncir—Supt's. Sec'y. (10)
R. W. Henderson—Telegraph Operator. (1)
Geo. Wilson—Messenger Boy. (1)
Ed. McCord—Messenger Boy. (1)

Employes who signed with Association, but who subsequently signed retractions, and signed with Brotherhood prior to August 6, 1927:

H. F. Dickson—Signed retraction from Association June 16, 1927.
L. H. Hardy—Signed retraction from Association June 16, 1927.
W. T. Rawlings—Signed retraction from Association June 16, 1927.
J. R. Carroll—Signed retraction from Assotion June 16, 1927.

177 Ed. G. McCord—Signed retraction from Association June 16, 1927.
W. G. Brown—Signed retraction from Association June 16, 1927.
Denton Dailey—Signed retraction from Association June 16, 1927.
S. A. Nelson—Signed retraction from Association June 16, 1927. (8)
(The date upon which the above signed with Association is unknown as all authorizations are undated.)

Employes who signed with Brotherhood prior to August 6th, and subsequent to time of having signed with Association:

A. J. Manix,	6/17	H. W. Reeves,	6/18
O. A. Walker,	6/20	W. W. Delaney,	6/16
T. D. Hill,	6/15	Lee Wheelis,	6/24
C. R. Raven,	6/14		(7)

The following names do not appear on January 1, 1927, seniority rosters:

Fred Moss,	R. W. Henderson,
Wm. Hollis,	H. P. Dickson,
C. L. Ross,	R. E. Dincaus,
L. F. Ezzell.	E. J. Harbich,
Ed. G. McCord,	L. H. Hardey,
Lee Wheelis,	H. E. Mizzell,

(9)

(July and August 1927 payrolls have not been checked.)

None of the authorizations were dated. (66)

Total eliminations (less duplications of names eliminated for more than one reason).....(110)

Dining Car Department.

Total number of signatures counted .....(6)

All signatures appearing on the lists from the Dining Car Department should be eliminated as being not within the class of employes involved. (See letter of J. G. Torian attached to Houston Terminal List) (6)

None of the authorizations are dated. (6)

Total eliminations .....(6)

Houston General Stores.

Total number of signatures Counted .....(74)

All signatures on the lists from the Houston General Stores, except T. V. Vermillion, Jose Gomez and James J. Phifer, should be eliminated, because they authorize representation by W. C. Biddle, an individual, and there is nothing appearing on the documents which authorizes representation by the association nor is it even referred to—(71)

For more particular reasons, the following signatures should be eliminated:

Persons who do not come within the class of employes involved:

Personal Office Force:
Bonnie Thompson—Stenographer to District Storekeeper.
J. R. Cade—Store Accountant.
W. P. Stamps—Chief Clerk. (3)

Tractor and Truck Drivers:

E. M. Jackson,	D. H. Martindale,	
A. H. Jones,	J. H. Sugg,	
Elmer Lewis,	Elliott Lewis,	(6)

178 Messenger Boys:

C. J. Parr,	John Nicholson	(2)

Edwin Kendrick—Name does not appear on payrolls.

Employes signing with B. of R. C. before August 1927:

L. H. Oakley, signed with B. of R. C. 7/2 Assn. Signatures not dated.
H. E. Poindexter signed with B. of R. C. 6/22 Assn. Signatures not dated.
W. B. Critcher signed with B. of R. C. 6/22 Assn. Signatures not dated. (3)

Signatures of the following were dated:

T. V. Vermillion,	James J. Phifer.
Jos. Gomez.	

All other names on list were undated. (71)

Total eliminations (less duplications of names eliminated for more than one reason) .....(71)

Beaumont Division.

Total Number of Signatures Counted (125).

The following signatures should be eliminated for the following reasons:

J. R. Atkins (Name appears twice on lists) (1)
C. F. Kendall (Name appears twice on lists) (1)

Persons not coming within the class of employes involved:

Personal Office Force:

T. A. Rossiter—Head File Clerk.
L. Baker—Superintendent's Secretary.
T. R. Nystrom—Superintendent's Chief Clerk.
W. H. Kolter—Chief Clerk to Division Engineer.
Agnes Gordon—Personal Stenographer MofW.
G. E. Rohrer—Division Accountant.
F. L. Dickinson—Chief Clerk, Local Office, Shreveport.
M. D. Walker—Chief Clerk, Local Office, Beaumont.
J. C. Brown—Assistant Chief Clerk to Supt.
P. H. Young—Chief Timekeeper.
R. A. Jackson—Chief Clerk, Local Office, Lufkin. (11)

Messengers:

S. B. Sullivan, Frank Baum,
R. J. West, Carl Brammer,
N. C. Allshouse, G. H. Gillette,
Glenn Green (Out of service since July 1, 1927). (7)

W. H. Corley—Trucker at Lufkin. (1)

Signed with Brotherhood subsequently to signing association authorizations but before August 6th, 1927:

179 Name.	Date signed with Ass'n.	Date signed with B. of R. C.	Date signed retraction of Assn. sigature.
Edmund P. Jones	6/25	7/3	
P. L. Golden	No date	6/15	6/15
Earl S. Demint	No date	6/15	6/15
Harris Campbell	"	6/14	
R. C. Epes	"	6/15	6/15
C. R. Yancey	"	6/29	
J. L. Council	"	6/18	
E. H. Heitman	"	7/18	7/18
C. B. Riley	"	7/14	7/14
J. C. Coward	"	6/29	
J. H. Hicks	"	7/14	7/14
H. B. Stegall	"	7/14	7/14
Earl Medford	"	6/17	
D. D. Page	"	6/14	
W. E. Blaweway	"	7/12	7/12
R. O. Parker	"	6/14	
J. C. McNeil	"	6/14	
Carl Brammer	"	6/28	
T. A. Morgan	"	6/22	
G. H. Gillette	"	6/28	
Jake Lorino	"	6/14	
Council G. Russell	"	6/14	
M. P. Robichaux	"	6/15	
W. E. Davis	"	6/14	
R. H. Smith	"	6/18	
A. P. Boner	"	6/14	
R. C. Renner	"	6/14	
J. W. Andrews	"	6/14	

The following signatures were dated:

J. R. Atkins,	Wm. Grady Steed,
Rand A. Stafford,	E. P. Jones,
Floyd O. Parks,	R. B. Powell.
Clarence F. Kendall,	

The other 118 signatures are undated. (118)

Mary Ruth—Out of service since July 1, 1927. (1)
Glenn Greene—Out of service since July 1, 1927. (1)

Total eliminations (less duplications of names eliminated for more than one reason).....(121)

Houston Division.

Total Number of Signatures Counted (111).

All signatures appearing on the authorizations from the Houston Division should be eliminated, because there is nothing appearing on them which authorizes representation of signers by the Association. Eighty-three signers authorize representation by H. J. Genard, and twenty-eight by W. J. Ehrhardt, individuals, but nothing on the authorizations can be construed as being authority for representation of signers by the Association, which is not even mentioned— (111)

For more particular reasons, the following signatures should be eliminated:

Persons not coming within the class of employes involved:

Personal Office Forces:

E. H. Riddle—Forman, Store Department.
C. B. Christian—Foreman, Store Department.
Frank Kinney—Chief Clerk M. of W.
J. E. Lockwood—Division Accountant.
W. D. Turbeville—Assistant Chief Clerk to Sup't.
J. M. Lovece—Trainmaster's Clerk.
Grace Torres—Personal Stenographer.
H. D. Beckleman—Chief Clerk to Sup't.
C. G. Wright—File Clerk.
Lucile Killian—Personal Stenographer.
C. A. Synder—Chief Timekeeper.
W. M. Montez—Superintendent's Secretary.
E. E. Sitterlee—Personal Stenographer.
J. R. Osman—Chief Clerk—M. P. & C.
A. S. O'Brien—Chief Clerk, Master Mechanic—Yoakum.
C. H. McKean—Chief Clerk—Yoakum.
H. H. Hunt—Chief Clerk, Local Office, San Antonio.
E. P. Shaper—General Foreman, Yoakum stores. (18)

Messenger Boys:

B. M. Mills, Horace Baker,
W. A. Wilkins, Otis Giddings.
R. E. Agnew, (5)

PBX Operators:

Agnes McDavitt, Hettie Fleming.
Hildreth Hughes, (3)

E. M. Coker—Commissary Department. (1)
B. R. Persch—Baggage Agent (1)
Edith Baker (Name appears twice on the lists) (1)
Nora Erderle (Out of service since July 1, 1927.) (1)

The following signatures are undated:

F. A. Bednark,	E. M. Coker,
E. P. Hemphill,	W. E. Allen,
E. H. Riddle,	Edith Baker,
C. B. Christians,	

(7)

Total eliminations (less duplications of names eliminated for more than one reason) .....(111)

Houston Terminal Division.

Total Number of Signatures Counted (114).

All signatures appearing on sheets 1, 2, and 3 of the authorizations should be eliminated because they authorize representation by J. C. McDaniel, an individual, and there is nothing in the documents which authorizes representation by the Association. As matter of fact, these documents state that the signers are not members of any labor organization. Authority was extended only to J. C. McDaniel who has sworn in this case that he is not officially connected with the Association. (84)

For more particular reasons the following should be eliminated:

Persons not coming within the class of employes involved:

Personal Office Force:
C. W. Derrington—Chief Clerk to Sup't.
H. R. Brandt—Asst. Chief Clerk to Sup't.
Mrs. L. H. Greig—Personal Staff, Sup't.
T. D. Elam—Chief Clerk, Local Freight Sta. (4)

181 Creosote Works Employes—(See copy of letter of H. W. Harper and letter of J. G. Torian attached hereto):

J. B. Young,	Matthew Garcia,
F. O. Buck,	L. A. Garrett,
E. P. Frey,	Charlotte Lacy,
J. D. Magee,	H. E. Meek,
J. G. Fall,	R. J. Bush,
Aline Light,	M. W. Dickey,

(12)

Auto Messenger—F. J. Hagewood (1)
Baggage Agent—Houston—C. M. Blackburn. (1)
Duplicate signature (Name appears twice on list)—H. Reesby. (1)

Signed with Brotherhood prior to August 6th, 1927, but subsequent to date signed with Association:

T. L. Clemons—Signed with Brotherhood 6/15, with Association 5/26.
J. A. Bassett—Signed with Brotherhood 6/16, with Association (not dated). (2)

The following signatures are not dated:

J. O. Kissinger,
Nan Wilson,
J. E. Park,
W. H. Reesby,
D. O. Walker,
J. A. Bassett,
J. T. Dickson,
A. R. Graves,
N. M. Thompson,
S. H. Lord,
T. D. Elam,
R. J. Cheeseborough.
H. Reesby,
Joe Dickson,
W. C. Neely,
(15)

The following names do not appear on January 1, 1927, seniority rosters:

Aubrey Semo,
E. B. Hefner,
W. J. Kerr,
J. A. Bassett,
Jos. M. Neel,
W. L. Gilbert,
H. A. Shiver,
Carl Blassingame,
August Rebuck,
A. L. Chapman,
Alton Shiver,
Earl Hensley,
A. E. Grota,
S. A. Coleman,
Milton Ramsey,
(15)

Total elimination: (less duplications of names eliminated for more than one reason) .....(110)

(Letterhead of Southern Pacific Lines.)

Houston, Texas, March 22, 1927.

Seniority Rosters as of Date January 1, 1927:

Mr. H. W. Harper,
General Chairman, B. of R. C., C-51 CRT.
211 Moore Bldg.,
San Antonio, Texas.

Dear Sir:

Your letter March 7th.

The forces in the two offices mentioned (Manager of Dining Car Service and Superintendent of Wood Preserving Plant) are not covered by the seniority districts set up in the schedule.

Yours truly,
J. G. TORIAN,
Asst. to V. P. & G. M.

5—e.

182 San Antonio, Texas, March 7, 1927.

Seniority Rosters—1927.

Mr. J. G. Torian, C-50 CRT.
Ass't to V. P. & G. M.,
Southern Pacific Lines,
Houston, Texas.

Dear Sir:

Under date of December 24, 1926, we requested the Superintendent of Dining Car Service and the Superintendent of the Creosote Works at Houston to furnish us with copies of seniority rosters, when revised as of January 1st, 1927, covering classes of employees in their respective departments coming within the scope of our Agreement.

We have not been favored with a reply from either of those two departments and it will be appreciated if you will secure copies of those rosters for us.

Yours truly,
H. W. HARPER,
General Chairman.

183 New Orleans Terminals.

Total Number of Signatures Counted (70).

All signatures appearing on the authorizations from the New Orleans Terminals on pages Nos. 1, 8, 9, 10 and 11, should be eliminated, because they authorize representation by J. G. Fernon, an individual and there is nothing appearing on the documents which authorizes representation by the Association, nor is the Association even mentioned. (59)

For more particular reasons, the following signatures should be eliminated:

Persons not coming within the class of employees involved:

Personal Office Forces:

G. Dutriel, Chief Clerk, Store Department,
M. J. Dauenbaum—General Foreman, Store Dept.
W. S. Keisel—Receiver Foreman, Store Dept.
F. M. McClean—Lumber Yard Foreman, Store Dept.
Wm. German—General Delivery Foreman, Store Dept.
E. J. Gaerthner—Chief Clerk to Supt.
J. E. Kilduff—Chief Clerk M. P. & C. Dept.
W. K. Mashburn—Shop Accountant.
R. C. Oswald—Chief Clerk, Car Dept.
A. M. Tesson—Chief Timekeeper.
E. Scharfschwert—Personal Steno. to Supt.
Harry Grau—File Clerk to Supt.
J. F. Chalon—Division Accountant.
A. D. Raggio—Foreman Poydras Freight Station. (14)

Messenger Boys:
Earnest Muenster, Lorin J. Alford,
Richard H. Coles, Jr., (3)

August Capdeville, Ass't. to Terminal Freight Agent. (1)

Employees who signed with Brotherhood subsequent to having signed with Association, but before August 6th:

Sam Washastron, signed with Brotherhood 6/15, Ass'n. signature undated.
Elmer A. Barichivich, signed with Brotherhood 6/15, Ass'n. signature undated.
H. D. Harper, signed with Brotherhood 6/22, with Ass'n. 6/17.
M. W. Reed, signed with Brotherhood 6/22, with Ass'n. 6/17. (4)

The following signatures were undated:

Sam Washastrom, J. F. Chalon,
Elmer A. Barichivich, (3)

Total eliminations (less duplications of names eliminated for more than one reason .....(63)

184 El Paso Division.

(Total Number of Names Wanted—(60).

All signatures on the lists from the El Paso Division should be eliminated because they merely authorize representation by Dave Harper an individual, and there is

nothing appearing on the documents which authorizes representation by the Association, nor is the association even mentioned— (60)

The signatures of the following employees should not be counted as said employees do not come within the class involved:

Personal Office Force:
A. L. Wilton—Chief Timekeeper.
L. R. Hammond—Secretary to Superintendent.
A. J. Vaillencourt—Shop Accountant.
H. B. Wilson—Chief Clerk M. P. & C.
Dave Harper—Chief Clerk, M. of W.
H. C. Crabtree—Store Accountant.
Chas. Buchanan—Assistant Chief Clerk.
A. J. Sherwood—Division Accountant.
R. V. Cook—Chief Clerk to Superintendent.
Francis Mosig—Personal Stenographer.
J. H. Ward—File Clerk to Superintendent. (11)

Arthur Porras—Messenger Boy. (1)
Oscar Wangeman—Messenger Boy. (1)
Bert Campbell—Negro Janitor. (1)
P. Martinez, Janitor. (1)
Tiney Merritt—Elevator Operator. (1)
Maude Gillespie—Out of service (Not on payroll second period of July). (1)
Ivan E. Scotten—Out of service (Not on payroll second period of July). (1)

None of the authorizations were dated.

Total eliminations (less duplications of names eliminated for more than one reason) ..... (60)

185 The alleged authorizations presented by the Texas and New Orleans Railroad Company contain the following specific authorizations:

Direct authorizations to the Association and authorizations in which the signers expressed a desire to form an association of Clerks, which would represent them after such formation.. 186

Authorizations which expressed desire not to be represented by the Brotherhood, but which make no mention whatever of the Association nor any mention of any representative..... 106

Authorizations to H. V. Mielly individually. Association is not designated, nor even mentioned 85

Authorizations to F. C. Ehlinger, individually. Association is not designated nor even mentioned 119

Authorizations to P. A. Caldwell individually. Association is not designated nor even mentioned 2

Authorizations to A. Donahue individually. Association is not designated nor even mentioned 1

Authorizations to G. E. Garrett individually. Association is not designated nor even mentioned 1

Authorizations to G. E. Garrett individually. Association is not designated nor even mentioned 53

Authorizations to W. C. Biddle individually. Association is not designated nor even mentioned 71

Authorizations to W. J. Ehrhardt invidually. Association is not designated nor even mentioned 28

Authorizations to H. J. Genard individually. Association is not designated nor even mentioned 83

Authorizations to J. C. McDaniels individually. Association is not designated nor even mentioned. 84 signers expressly state that they do not belong to any labor organization..... 84

Authorizations to J. G. Fernon individually. Association is not designated nor even mentioned 59
Authorizations to Dave Harper individually. Association is not designated nor even mentioned 60

Total..... 937

186 Texas and New Orleans Railroad Company.

Houston Texas, June 21, 1923.

Ballot to Determine Representation Clerical Employees, Other than General Office Employees:

Mr. Ralph J. King,
General Chairman B of RC
210 Moore Bldg,
San Antonio, Texas.

Dear Sir:

Referring to conference of June 19th in regard to above named matter.

In the spreading of the secret ballot to determine the wishes of a majority of the clerical employees as to whom they desire to represent them in negotiations with the Management you took the position that the 110 employees who were classified as Personal Office Force were not entitled to vote in this proceeding, contending that they were not subject to the rules and it would, therefore, be improper to permit them to vote. Inasmuch as these employees are not subject to the rules and to representation by your Organization, the Company agreed with your contention that it would be proper to exclude the entire 110.

Yours truly,
(Sgd) J. G. TORIAN,
Ass't to V. P. & G. M.

JGT s

Indorsements: Equity No. 314 In the District Court of the United States for the Southern District of Texas-Houston Division-Brotherhood of Railway Clerks etc., et al vs Texas and New Orleans Railroad Company et al-Affidavit of H. W. Harper concerning alleged authorizations submitted by Defendants-Filed 21st day of Nov. 1927. L. C. Masterson, Clerk, by J. L. Sexton Deputy.

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187 ANSWER OF TEXAS & NEW ORLEANS RAILROAD COMPANY & AFFIDAVIT OF G. S. WAID WITH RESPECT TO AFFIDAVIT OF H. W. HARPER CONCERNING AUTHORIZATIONS FILED HEREIN BY DEFENDANT.

Filed November 22, 1927.

(Title Omitted.)

Comes now Texas and New Orleans Railroad Company and for answer to the memorandum or pleadings filed herein by and behalf of H. W. Harper, one of the complainants herein, on the 21st day of November, 1927, represents and shows to the Court:

That it is not true, as alleged in said pleading or memorandum, that the authorizations presented by the Association of Clerical Employees of Southern Pacific Lines in Texas and Louisiana to this defendant and acted on by it were or are from less than a majority of the clerical employees of the defendant (other than general office employees) or that said authorizations were or are insufficient or invalid, but, on the contrary, said defendant represents and shows to the Court that the said authorizations were and are from a majority of said clerical employees, to-wit: from 929 and more of them.

Defendant represents and shows to the Court that the total number of signed authorizations filed by it herein was and is 938, but that in the count of same by J. R. Sexton, Esq., Deputy Clerk of this Court, under authority of the Court, one signature, being blurred or apparently partly erased, was not counted; that defendant has caused the question of said signature and its validity to be investigated and finds that said signature was and is valid and, as evidence thereof, presents herewith, as Exhibit "A", the written statement of
188 the signer aforesaid; that the fact that said signature was not counted as above alleged is shown on the original authorizations by notation thereon of the said J. R. Sexton, Esq., signed with his initials.

That it is a fact that there were and are on said lists five duplications of signatures, but said duplicate signatures were not counted or relied on by defendant, and accordingly, the total number of authorizations less duplications, was and is 933; that there was also included in said authorizations one signed by Bert Campbell, who is a negro janitor employed on the El Paso Division, and also W. H. McCauley, a freight trucker at Lufkin, Texas. While these men work under the clerks' rules, they are not ordinarily eligible for membership in Clerks' unions and were and are properly excluded from the count of authorizations, thereby reducing the said number to 931, which is more than the 929 claimed by the Association as of August 5 and 6, 1927.

With respect to all said other authorizations defendant represents and shows to the Court:

(1) With respect to authorizations signed by some 661 clerical employees naming individuals as representatives but not expressly referring to the Association of

Clerical Employees and to authorizations signed by some 90 employees said not to name any particular individual representative: Defendant represents and shows to the Court that each and all said parties so named, or their representatives, and representatives selected by the clerical employees who had stated in writing, in substance, their desire to negotiate with the management direct for an association of clerks did in truth and in fact select their several representatives either by written designation of named representatives and by majority vote and at meetings held for the purpose,
189 designated and selected their several division representatives, which said several division representatives met in a body and elected and selected, as they were authorized to do by authorities expressly conferred upon them and by the custom of employees of railroads generally in selecting representatives and as authorized by the Railway Labor Act, approved May 20, 1926, and selected and elected F. C. Ehlinger as General Chairman, A. G. Baker as Vice General Chairman, and D. D. Wade as Secretary and Treasurer of the association of Clerical Employees and thereupon advised and proved to the defendant that the said F. C. Ehlinger, A. G. Baker and D. D. Wade were in fact the duly and legally authorized representatives of all said clerical employees so signing said authorizations without regard to the form thereof.

That under Paragraph Third, Section 2, of said Railway Labor Act it is provided:

"Representatives for the purpose of this Act shall be designated by the respective parties in such manner as may be provided in their corporate organization, or unincorporated association, or by other means of collective action * * * "

and that by Paragraph Second of Section 3 of said Act it is provided:

"Nothing in this Act shall be constructed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

Pursuant to the foregoing allegations and provisions the said representatives and the said General Chairman, Vice General Chairman and Secretary and Treasurer notified defendant on said July 11, 1927, of their desire to meet, discuss and agree upon rates of pay and working conditions; and the agreement between the said parties, acting for their said constituents, and the said defendant made and entered into on the 6th day of August, 1927, was in truth and in fact pursuant to the authorizations aforesaid and other authorizations obtained thereafter but on or before August 5th and 6th, 1927, and
190 thereupon presented to this defendant.

That included among the signers of said authorizations so presented to defendant on said August 5th and 6th, 1927, there were included, in addition to those hereinbefore referred to, approximately 80 names of laborers, freight truckers, porters and other employees coming under the class of laborers, who were covered and governed by the rules and rates of pay negotiated and agreed upon by and between representatives of the clerical employees and of the Company, but who ordinarily do not become and are not ordinarily members of either the Brotherhood or the Association principally for the reason that their rates of pay being generally low, they cannot readily be persuaded or prevailed upon

to pay dues. Defendant, as appears from said written authorizations, declined to count or to consider said signatures of said laborers as appears from signatures stricken out either by lines drawn through them or by cross-lines through entire groups of such signatures.

In addition to the foregoing, the signatures of two agents to said authorizations were stricken out by defendant, or at its request, and not counted.

And defendant submits that its count and check of the authorizations aforesaid and the signatures thereof was made in the utmost good faith, and that said Association and its said representatives were recognized and contracted with by the defendant in the utmost good faith, and without the least purpose or intent of violating or evading any order of this Court.

(2) With respect to said authorizations not dated, said to number 422, or some such number: Defendant represents and shows to the Court that it was and is wholly unnecessary that said authorizations should be dated; that they were presented to defendant and were considered and acted upon by it on to-wit: August 5th and 6th 1927, and, having been so presented and acted on, were obviously executed prior to said dates.

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(3) With respect to employees falling within the class of personal office forces, who have signed said authorizations and who have in fact authorized said Association to act for and represent them, amounting to 110, or some such number: Defendant represents and shows to the Court that the said clerical employees known as personal office forces are in truth and in fact clerical employees, entitled to be heard and to be repre-

sented in all matters which may be and have been handled between employer and employees by representatives of clerical employees, other than general office forces; that the said personal office force are subject to rates of pay and to the rules of such clerical employees generally, save and except in the matter of seniority and of overtime, the matter of seniority being elimated for the reason that such personal office forces may and often must be selected because of personal qualifications rather than because of seniority, and the matter of overtime being eliminated because the same is taken care of in the regular compensation of said employees, whose work requires them on occasions to work overtime in order to coincide with the hours of work of their superior officers; that in truth and in fact the Brotherhood of Railway and Steamship Clerks has had among its members clerks employed as personal office force and some of its officers have been so employed; that, therefore, said personal office forces were and are properly included within the membership and authorizors of representation by said Association. That the wages and working conditions, except as to seniority and overtime, of said personal office forces are customarily regulated by agreements between representatives of the clerical employees generally and the railroad company and to deprive the said clerks included within the term "personal office forces" of representation in a clerks' organization would operate to deprive them of any voice in the determination of said matters.

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That the foregoing is recognized and provided for by the said Railway Labor Act and in the proviso of Paragraph Fifth of Section I thereof as follows:

"That no occupational classification made by order of the Interestate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

(4) With respect to signers of said authorizations, said to number 76, alleged by said Harper to have signed authorizations with the Brotherhood of Railway and Steamship Clerks, etc., after having signed with the Association, but prior to August 6, 1927, and to the 16, who are included in said 76 above referred to, said to have signed retractions of authorizations to the Association before August 6th, 1927; Said defendant represents and shows to the Court that none of said alleged signers of authorizations or of retractions had or have at any time made known to the defendant, or its officers or, on information and belief, to the Association, or its officers, the fact, if it be a fact, of the signing of said alleged counter-authorizations and retractions, and the said Brotherhood of Railway and Steamship Clerks has not at any time made known said alleged fact either to the defendant, or, on information and belief, to the Association: that the defendant, in counting and considering the authorizations of said parties, did so in good faith and without any knowledge or notice of any such retraction whatsoever.

Further with respect to said allegation, defendant represents and shows to the Court, on information and belief, that at least 20 of said parties said to have signed counter authorizations or retractions are in truth and in fact now members of the Association and paying dues thereto.

193 (5) With respect to said authorizations alleged to be from employees whose names do not appear on rosters of the defendant and numbered 52, or some such number: Defendant represents and shows to the Court that defendant's rosters are made up annually about, and as of, the first day of January of each year; that there is, of course, a large turn-over in the clerical employees of defendant and it is only natural and reasonable that there should be employees of defendant as of August 5th and 6th of any year not shown on the rosters as of the preceding January 1st, but that in truth and in fact all said employees were duly employed by defendant in the capacity of clerks, or in capacities falling within the Clerks' classification, at the time of execution of their authorizations. A list of said employees and their occupations is appended as Exhibit "B".

(6) With respect to 32 employees designated as messenger boys sought to be excluded by said Harper in his memorandum or pleading aforesaid: Defendant represents that messenger boys are in truth and in fact clerical employees and so considered both by the Brotherhood of Railway and Steamship Clerks and by the Association of Clerical Employees.

(7) That Creosote Works employees, 12 in number, are in truth and in fact clerical employees and were properly included in the count of representatives.

(8) That the Dining Car employees, 7 in number, included in said authorizations, were and are in fact clerical employees and properly counted.

(9) That alleged employes of Lake Charles & Northern Railroad Company, 7 in number, are in truth and in fact clerical employees of Texas and New Orleans Railroad Company and properly included and counted; that said Lake Charles & Northern Railroad Company, as a separate operating entity, ceased to exist on or about March 1, 1927, and its properties have
194 since that date been operated by Texas and New Orleans Railroad Company under lease and its former employees have been, since said date, and are employees of Texas and New Orleans Railroad Company.

(10) That truck drivers (6), elevator operator (1), private branch exchange telephone operators (3), janitor at El Paso who is in fact, in addition to being a janitor, a messenger (1), assistant to the terminal freight agent at New Orleans (1), baggage agents (2), auto messenger (1) are each and all clerical employees and eligible as members in either the Brotherhood or the Association. Their working conditions and rates of pay are fixed by clerks' agreements.

(11) That the one employee alleged by the said Harper to be a telegraph operator (R. W. Henderson) is in fact a warehouse clerk at Mathis, Texas, and eligible to membership in either the Brotherhood or the Association. He is elsewhere objected to by said Harper as not on the roster, but is in fact on the clerks' seniority roster and on the pay rolls.

(12) That the said employee alleged by the said Harper to be an employee of the Gulf, Colorado & Santa Fe Railway Company at Forth Worth (T. B. Kemp)

is employed at the Fort Worth Passenger Station, which is operated alternately by the Gulf, Colorado & Santa Fe Railway Company and Texas and New Orleans Railroad Company; that he holds seniority on Southern Pacific Lines and said Texas and New Orleans Railroad Company as of February 5, 1913, and has the right to bid for any vacant clerical positions in his seniority district of Texas and New Orleans Railroad; that he is eligible to membership in either the Association or the Brotherhood as an employee of said Texas and New Orleans Railroad Company. He is elsewhere objected to by said Harper as not on the roster but he is on it and has been in the service 14 years.

195 (13) Assistant Freight Agent at Fort Worth has the title of Assistant, but in truth and in fact he is subordinate to the chief clerk as well as to the agent at said station. He carries said designation principally in order that he may execute live stock contracts, bills of lading and similar instruments required to be executed at the stock yards in Fort Worth. He is in fact a clerical employee and properly counted as such.

(14) With respect to Assistant to Terminal Freight Agent at New Orleans. Said employee is a clerical employee, eligible to membership in either the Association of the Brotherhood and is properly included in the classification of a clerical employee.

(15) With respect to employees signing said authorizations and alleged not to have been in the service of Texas and New Orleans Railroad Company as of August 6, 1927, said employees being 6 in number: Because of the large labor turn-over in clerical capacities on defend-

ant's line it was and is impossible that defendant's officers can currently keep up with such turn-over. All said employees were in good faith believed by the officers of defendant handling this matter to be actual employees at the time of said count and they were all actually employees at the dates of their authorizations. Their number has been more than offset by employees newly entering the service of defendant, who are members of or have authorized the association to represent them.

BAKER, BOTTS, PARKER & GARWOOD,
J. H. TALLICHET,
CALVIN B. GARWOOD,
Attys. for Def.

196 State of Texas,
County of Harris.

I, G. S. WAID, being duly sworn, deposes and says:

I am an officer of Texas and New Orleans Railroad Company and have the knowledge and authority necessary to the making of this affidavit in its behalf. I have read the foregoing answer, know the contents thereof, and the matters and things therein are true, except as alleged on information and belief and as to said matters and things I verily believe them to be true.

G. S. WAID.

Sworn to and subscribed before me on this the 22nd day of November, A. D. 1927.

O. G. KEHRER,
(Seal) Notary Public in and for Harris County, Texas.

EXHIBIT "A".

Algiers, La. Nov. 15, 1927.

Mr. F. C. Ehlinger,
Houston Tex.

This is to certify that I did sign petition to be represented by the Association of Clerical Employes of the Southern Pacific R. R. and request that my signature be accepted as rendered.

With best wishes for the success of our Association, I beg to remain,

Yours respectfully,
(Signed) JOHN LOUGHRAN,

197 EXHIBIT "B".

List of employees claimed by plaintiff not to be on seniority list of January 1, 1927, but in fact on pay rolls:

Louisiana Lines.

John J. Bibbins, R. M. Clerk, Morgan City.
A. L. Bourg, Steno. Supts. Office.

Dallas Division.

C. T. Dumas, Steno-Clerk, Supt's Office.
J. H. Pankey, Utility Clerk, Fort Worth.
Joe Baldridge, Jr. Timekeeper, M. M. Office Ennis.
E. A. Horton, Asst. Bill Clerk, Dallas Frt. Sta.
H. M. Cloud. Roundhouse Clerk, Dennison Shop.
Guy Tatum, Asst. Fuel Clerk, Ennis.
T. W. Borders, Roundhouse Clerk, Ennis.

Earl Johnson, Caller, Ennis.
S. A. Cave, Store Foreman, Ennis.
Earnest Allen, Caller, Hearne.
R. L. Hutchison, Messenger, Sherman.
M. C. Jones, Transportation Clerk, Ennis (On leave of absence at present).
B. J. Donaho, Exp. Bill Clerk, Ft. Worth Frt. Sta.
O. W. Williams, Shipping Clerk, Ennis.
Jack Wilson, Jr., Roundhouse Clerk, Ennis.
W. E. Brittain, Caller, Ennis.
J. R. Duke Messenger, Fort Worth.
T. B. Kemp, Clerk, Ft. Worth Psgr. Sta. (Holds seniority date of Feb. 5, 1913, on Southern Pacific Lines.)

Houston General Shops.

E. W. Clappert, Caller, Houston.
W. E. McCullar, Caller, Houston.
C. C. Casey, Caller, Houston.
James L. Booker, Messenger, Houston.
W. T. Finck, Messenger, Houston.

Austin Division.

Edward J. Simpson, Roundhouse Clerk, Waco.
Phillip O. Bengston, Rate Clerk, Austin.
H. T. Parker, Utility Clerk, Marble Falls.

Victoria Division.

Fred Moss, Baggage Agent, Victoria.
Wm. Hollis, Caller, Victoria.
C. L. Ross, Clerk, Skidmore.
L. F. Ezzell, Clerk, Edna.

Lee Wheeles, Clerk, Skidmore.
Ed. G. McCord, Messenger Corpus Christi.
H. F. Dickson, Bill Clerk, Corpus Christi.

198 Exhibit "B" (continued.)

Victoria Division. (Continued).

R. E. Dincans, Clerk, Victoria.
E. J. Harbich, Warehouse Clerk, Victoria.
L. H. Hardy, General Clerk, Corpus Christi.
H. E. Mizell, Caller, Victoria.
R. W. Henderson, Warehouse Clerk, Mathis.
(Also shown on Clerk's seniority list of January 1, 1927, with seniority date May 21, 1926, as Clerk.)

Houston Terminals.

Paul W. Young (shown in paper filed by plaintiff as "Aubry Semo")

W. J. Kerr, Line Desk Clerk, Houston Yards.
E. B. Hefner, C. C. to Div. Engr. Houston.
J. A. Bassett, Roundhouse Clerk, Galveston.
Jos. M. Neel, Transfer Clerk, Houston Yards.
W. L. Gilbert, Car Checker, Houston Yards.
H. A. Shiver, Caller, Houston.
Carl Blassingame, Steno. Houston Yards.
Adolph Rebuck, Car Checker, Houston Yards.
A. L. Chapman, Caller, Houston Yards.
Alton Shiver, Caller, Houston.
Earl Hensley, Car Checker, Houston Yards.
A. E. Grata, Caller, Houston Yards.
S. A. Coleman, Car Checker, Houston Yards.
Milton Ramsey, Caller, Houston.

199 SUPPLEMENTAL ANSWER OF T & N. O. R. R. CO. AND AFFIDAVIT OF M. NICHOLSON TO AFFIDAVIT OF H. W. HARPER.

Filed Nov. 23, 1927.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes Texas and New Orleans Railroad Company and files this, its supplemental answer and affidavit to affidavit of the said H. W. Harper filed herein on November 21, 1927, and, in addition to the matters and things shown to the Court in its original answer and affidavit filed herein on November 22, 1927, represents and shows to the Court:

That of the six employees alleged and represented in the affidavit of the said Harper as having left the service of the defendant after executing authorizations in favor of the Association of Clerical Employees, Southern Pacific Lines, two of the said employees had, at the time of counting the said authorizations, not left said service. Said employees are as follows:

Mary Ruth, Material Voucher Clerk Beaumont Division, Houston, Texas who was on sick leave on or about August 5th and 6th, 1927, and whose name, therefore, did not appear on the rolls on said dates. Said Mary Ruth thereafter returned to her duties and under the rules and regulations of the defendant was still a

clerical employee on the dates last referred to.

Nora Enderle, Utility Clerk, Division Engineer's Office, San Antonio, Texas, was absent and not actually rendering service on said August 5th and 6th, 1927, and her name, therefore, did not appear on the rolls on or about said dates, but she thereafter returned to the
200 service and under the rules and regulations of the defendant with respect to clerical employees was properly considered as in the service during the period of her said absence from duty.

M. NICHOLSON,

201 State of Texas,
County of Harris.

M. NICHOLSON, being duly sworn, deposes and says:

I am Wage Adjuster, in the employment of Texas and New Orleans Railroad Company, and as such have the knowledge and authority necessary to the making of this affidavit in its behalf. I have read the foregoing and the matters and things therein set forth are true.

M. NICHOLSON,

Sworn to and subscribed before me on this, the 23rd, day of November, A. D. 1927.

O. G. KEHRER,
(Seal) Notary Public in and for
Harris County, Texas.

202 ORDER OF COURT FOR ISSUANCE OF PROCESS.

Filed Jany. 27, 1928.

(Title Omitted.)

It appearing to the Court, after full consideration that the defendants Texas & New Orleans Railway Company, H. M. Lull, G. S. Waid, J. G. Torian and W. R. Mann have violated this Court's injunction heretofore issued on August 3, 1927, and have interfered with, influenced and coerced with respect to their free and untrammeled right of selecting or designating their representatives, some of the plaintiffs and some of the class represented by them—

It is ordered that process issue to the said defendants, commanding them to be and appear before me in the United States Court room at Houston, at 10 o'clock on Friday, February 3rd then and there to receive the judgment and sentence appropriate to either the purgation or the punishment of such contempt as the Court may be then advised.

Houston Texas, January 27, 1928.

J. C. HUTCHESON, JR.
Judge.

203 OPINION OF COURT.

Filed Febry. 6, 1928.

(Title Omitted.)

This is a contempt proceeding brought against the Texas and New Orleans Railroad Company and certain of its officials upon information that they have violated a temporary injunction issued by this Court on August 3, 1927, restraining the defendant, its servants and agents, from violating the third paragraph of Section 152 of the Railway Labor Act. That section provides:

"Representatives, for the purpose of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organizations, or unincorporated associations, or by other means of collective action, without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other."

The terms of the injunction entered after a full hearing, followed closely the language of the Act. At that hearing the Company did not assert the invalidity of the Act. It merely denied that it had infringed it. (1)

(1) Its counsel said:—If it should appear that the corporation is coercing its employees, I would not be disposed seriously to contest that the Court would have a right to enjoin it under the terms of the United States Labor Board Act of May 20, 1926."

The Court in its opinion said:—

"The question simply here is whether under the Act passed for the purpose of settling disputes between carriers and their employees, which Act parties to this litigation seem to have as far as the record shows, acted upon and adopted, Congress can do what it has done to insure that in the settlement of these disputes each side shall be represented by those of its own selection, uninfluenced by the action of the other.

In short, Congress recognizing that a primary requisite of the settlement of a dispute is the truly representative character of those who bring it about, has determined, and I think has legally declared conditions under which these relations, if they are maintained, and these disputes, if they are adjusted, are to be adjusted."

At this hearing however, the defendants, while defending mainly on the ground that they had not violated the order, also raised by suggestion the question of the power of Congress to so legislate, citing Coppage vs Kansas, 236 U. S. 1 and Adair vs United States 208 U. S. 16.

204 It is fundamental that "A person proceeded against in a contempt case for disobeying an injunction, can never set up as a defense that the Court erred in issuing it. Errors must be corrected by appeal, and not by disobedience" Brougham vs Oceanic Steam Navigation Co. 205 Fed. 857, and "That a respondent in a contempt case may question the order which he is charged with refusing to obey insofar as he can show it to be absolutely void" 6 R. C. L. 505; O'Brien vs People 216 111,354; People vs McWeeney, Ann. cases 1916 B Vol. 40 p. 36; Toledo Scale Co. vs Computing Scale Co. 261 U. S. 399; Barnes vs Chicago, 230 111.403;

In view however, of the long continued, persistent and at times bitterly rancorous assertion that non-contractual relations of employer and employee do not present justiciable matters, that injunctions in labor disputes are political and not judicial, and that a proceeding of this kind is not the exercise of judicial power, but merely an essay in usurped and tyrannical "government by injunction", it seems desirable to here briefly set down the reasons which support the conclusions of the preliminary opinion, that Congress had full authority to make justiciable a controversy of this kind. (1)

(1) "Speaking generally, it may be observed that the judicial power of a nation extends to all controversies justiciable in their nature, the parties to which or the property involved in which may be reached by judicial process, and when the judicial power of the United States was vested in the Supreme and other Courts, all the judicial power which the nation was capable of exercising was vested in those tribunals, and unless there be some limitations expressed in the Constitution, it must be held to embrace all controversies of a justiciable nature arising within the territorial limits of the Nation, no matter who may be the parties thereto." Kansas vs Colorado 206 U. S. 83.

For the purpose of this opinion, it may be roughly stated that all justiciable matters are made so by law derived from two sources; that ascertained and declared by the judges as founded in and springing from the customs of the people, and that enacted by the legislatures.

Or again roughly, common law and statutory law,—Statutory law may be either declaratory or in derogation of the common law. In the former case, it makes more clear or gives more sanction to established customs. In the latter, while it may in rare cases run counter to established custom, it usually is declaratory of customs which, though existent as such have not yet become established as law so as to make actions in
205 defiance of them justiciable.

Customs then being the basis and spring of the law, changing as they must with changing conditions, judges and legislatures from time to time in declaring the law will make innovations upon it, and new adaptations of it, to conform to these changes; and so, slowly, through judicial decisions, and often with great rapidity through legislative action, the law modifies and grows and growing, lives.

Innovations in the case of Judge made law, the growth of new categories for justiciable matters, again roughly come by two processes: First, the slow interstitial process referred to by Mr. Justice Holmes (1) and second, the more rapid one of disapproving and overruling principles either erroneous when announced or become erroneous through changing customs, referred to by Mr. Justice Brandeis. (2)

(1) "I would recognize without hesitation that judges do and must legislate, but they can do so only interstially; they are confined from molar to molecular motions. A common law judge could not say I think the doctrine of consideration a bit of historical nonsense, and shall not enforce it in my Court.

No more could a judge exercising the limited jurisdiction of admiralty, say I think well of the common law rules of master and servant, and propose to introduce them here en bloc"

Southern Pacific vs Jenson, 244 U. S. 221.

(2) "Such limitation of principles previously announced, and such express disapproval of dicta, are often necessary. It is an unavoidable incident of the search by Courts of last resort for the true rule. The process of inclusion and exclusion, so often applied in developing a rule cannot end with its first enunciation. The rule as announced must be deemed tentative. For the many and varying facts to which it will be applied cannot be foreseen. Modification implies growth. It is the life of the law.

If the Court is of the opinion that this Act of Congress is in necessary conflict with its recent decisions, those cases should be frankly overruled.
Washington vs. Dawson, 264 U. S. 219."

It has been said that decisions go by established categories and that if for a particular state of facts no existing legal category may be found, the matter is not justiciable.

Such statement when taken in the light of the history of the law, and in recognition of the indubitable fact that the living principle of modification and growth inheres in it, is sound, for legal categories are
206 in this meaning constantly rearranging themselves to admit the newly established customs, which through their articulation by Courts and legislatures have become law.

Such being the origins of the law, it is plain that in the absence of some limitation upon it, whatever a particular Court or legislature might think to be the custom, could be declared to be the law, and laws might change with uncomfortable rapidity.

Against this danger two stabilizing influences, maintaining equilibrium and preserving old customs until outgrown, are constantly opposed.

In the Courts, it is that of stare decisis; in the legislatures it is that of the Fifth and Fourteenth Amendments, which so operate.

These amendments, providing as they do for the preservation of due process, that is, established custom, prevent arbitrary and unreasonable departures from established law, and are constantly being invoked in judicial controversies, where it is maintained that statutes, National and State, have sought to make justiciable matters which by reason of their prohibitions, cannot be made so.

One school of thinkers has maintained, and for awhile with apparent success, that the custom guaranteed by these amendments is fixed and static, and not subject, like other phases of the law, to change and growth.

(2 Cont.) "Stare decisis is ordinarily a wise rule of action. But it is not a universal, inexorable command. The instances in which the Court has disregarded its admonitions are many." Id. p. 238.

Another school, declaring that a true decision depends as well upon induction as upon deduction, has declared, in the language of Mr. Justice
207 Holmes: "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics" Lochner vs. New York, 198 U. S. 74. (1)

While in Euclid Valley vs. Ambler, 272 U. S. 365, Mr. Justice Sutherland for the Court declares:

"Regulations, the wisdom, necessity and validity of which as applied to existing conditions are so apparent that they are now uniformly sustained, a century ago, or even half a century ago would have been rejected as arbitrary and oppressive. And in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are coming within the field of their operation. In a changing world it is impossible that it should be otherwise." (2)

When, therefore, on either side of a dispute between an employer engaged in interstate commerce, a recognized subject of Federal legislation, and its employees, one asserts in the face of a statute which puts conditions upon its exercise, that that particular form of liberty, the liberty of contract, the right of the employer to hire and fire, and of the employees to serve or quit, in the absence of contract (the most stubbornly asserted of all the particular liberties) is unrestrainable he must be

(1) "General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law." Lochner vs. New York, 198 U. S. 74.

"It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judicial sources. * * * Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

Muller vs. Oregon, 208 U. S. 419.

(2) "The truth seems to be, that subject to compensation when compensation is due, the legislature may forbid or restrict any business when it has a sufficient force of public opinion behind it. Lotteries were thought a useful adjunct of the State a century or so ago; now they are believed to be immoral and have been stopped. Wine has been thought good for men, from the time of the Apostles until recent years. But when public opinion changed, it did not need the Eighteenth Amendment, notwithstanding the Fourteenth, to enable a State to say that the business should end."

Tyson & Bro. vs. Banton, 273 U. S. 446.

prepared not only to give learned dissertations
208 on the freedom of contract but to show in the light of established practices employed in the course of this long controversy and of the judicial and

legislative pronouncements upon it, that it has not behind it a sufficient force of general public opinion to create an established custom which may be articulated into law.

If in the solution of the matter, a student of the law, employing in his research, induction and deduction, should upon examination find, that rising at first slowly, and then through the full realization of a common plight, a common cause and a common remedy (the achievement of group solidarity and power through unionization) rushing on tides of feeling, the demand for collective bargaining became a passion with workingmen, and that begun more than a half century ago, this demand has been asserted and opposed with equal fierceness, and at the cost not only of the blood and treasure of the combatants, but of disturbances of the public peace and prosperity, and that for the greater part of this time, this asserted right of collective bargaining has been enjoyed, he would be an ignorant man indeed, who would not at once conclude that such a pregnant struggle could not have been so long waged without giving birth to customs both capable of, and in the interest of the public peace, requiring judicature.

He would not have been surprised to find the history of the origin, growth and change of such customs replete with legislative and judicial pronouncements. He would find that beginning more than forty years ago, six times has Congress legislated directly upon the subject. (1).

(1) Act of Oct. 1, 1888, creating a Board or Commission for settling controversies and differences between railroads and other common carriers engaged in interstate commerce and their employes.

The Erdman Act—June 1, 1898, nullified in part in Adair vs. U. S., 208 U. S. 167.

The Act of July, 1913, entitled An Act for the Arbitration of disputes between carriers engaged in interstate Commerce and the Employees.

The Act of Sept 3, 1916—The Adamson Act.

Act of ..... 1920, Railway Labor Board Act.

The Railway Labor Act of May 20, 1926.

209 That in cases without number the Courts have issued their injunctions declaring and vindicating judicial power to protect the commerce of the country from the anarchy and disruption arising out of these fierce labor disputes. (1).

He would find that though in Adair vs. U. S. 208 U. S. 167, a majority of the Supreme Court of the United States had not been able to see that the custom of balancing the concentrated power of the employer on the one hand, by the concentrated power of the employee on the other in negotiating wage and working agreements, which custom the Congress sought in the interest of the preservation of the even flow of commerce and the public peace to bring out of the field of mere custom into that of law, had so established itself as to become justiciable. But he would also find that the others of the judges dissenting could not see how the "liberty through sheer antipathy" to bring on a struggle which would disrupt commerce, could be paramount to public interest and he could but wonder at least if this were not so. (2).

(1) "Arising out of the stress and strain of the conflict of 1894 resulting in the disruption of commerce bordering on civil war, came In Re Debs, 158 U. S. in which in ringing words the Supreme Court declared the power of the Courts to protect the commerce of the country without resort to arms.

(2) Justice McKenna after declaring that the facts of history should not be overlooked, nor the course of legislation, said—"How can controversies which may seriously interrupt or threaten to interrupt the business of carriers be averted or composed if the carriers can bring on the conflict or prevent its amicable settlement by the exercise of mere whim or caprice? I say mere whim or caprice, for this is the liberty which is attempted to be vindicated as the constitutional right of the carriers * * * Liberty is an attractive theme, but the liberty which is exercised in sheer antipathy does not plead strongly for recognition." Adair vs. United States, 208 U. S. 186.

"What did Congress mean? Had it no purpose? Was it moved by no cause? Was its legislation mere wantonness and an aimless meddling with the commerce of the country? These questions may find their answer in In Re Debs, 158 U. S. 564." Id. p. 187.

"A provision of law which will prevent or tend to prevent the stoppage of every wheel in every car of an entire railroad system certainly has as direct influence on interstate commerce as the way in which one car may be coupled to another, or the rule of liability for personal injuries to an employee." Id. p. 189.

210 So wondering, he would not be surprised to find that when through the assertion of "liberty exercised in sheer antipathy" the United States, for want of compulsory arbitral measures was stood up and forced to deliver, and Congress, responding to the crisis, on September 3, 1916, enacted the Adamson Act fixing the eight hour standard; the Supreme Court of the

United States in an opinion unanswerable in its logic, and noble in its assertion of power settled for all time the full power of the Congress, either directly or by instrumentalities provided by it for compulsory arbiration, to settle disputes to prevent strikes and the disruption of commerce. (1).

(1) "We are of the opinion that the reasons stated conclusively establish that from the point of view of inherent power, the act which is before us was clearly within the legislative power of Congress to adopt, and that in substance and effect it amounted to an exertion of its authority under the circumstances disclosed, to compulsorily arbitrate the dispute between the parties by establishing as to the subject matter of that dispute, a legislative standard of wages operative and binding as a matter of law;—upon the parties—a power none the less efficaciously exerted because exerted by direct legislative act instead of by the enactment of other and appropriate means providing for the bringing about of such result. If it be conceded that the power to enact the statute was in effect the exercise of the right to fix wages where by reason of the dispute there had been a failure to fix by agreement, it would simply serve to show the nature and character of the regulation essential to protect the public right and safeguard the movement of interstate commerce, not involving any denial of the authority to adopt it." Wilson vs. New, 243 U. S. 351.

"The capacity to exercise the private right free from legislative interference affords no ground for saying that legislative power does not exist to protect the public interest from the injury resulting from a failure to exercise the private right." Id. 353.

"We are of the opinion that Congress had the power to adopt the act in question, whether it be viewed as a direct fixing of wages to meet the absence of a standard on that subject, resulting from the dispute between the parties, or as the exertion by Congress of the power which it undoubtedly possessed to provide by appropriate legislation for compulsory arbitration." Id. p. 359.

In his dissent Mr. Justice McReynolds said:

"Considering the doctrine now affirmed by a majority of the Court as established, it follows as of course that Congress has power to fix a maximum as well as a minimum wage for trainmen; to require compulsory arbitration of labor disputes which may seriously and directly jeopardize the movement of interstate traffic, and to take measures effectively to protect the free flow of such commerce against any combination, whether of operatives, owners or strangers." Id. p. 388.

211 Following after and founded upon these pronouncements establishing the justiciable character of controversies between employer and employed which tend to interrupt and affect commerce, customs, legislation and judicial decision furnish not only the precedent for the principle of the act, but disclose the very mischief which the act was designed to prevent, and provide for it the very language in which its direction is couched.

And first came the war, with railroads under Federal control, centered in Washington; the centralization of control in the United States as employer matched by centralization of control in powerful labor organizations as employees with resulting national agreements governing wages and working conditions.

This condition made inevitable the passage by Congress in 1920 of the Railway Labor Board Act for the settling of disputes between railroads and their employees, which it was foreseen would arise in the unscrambling process required in the return to private operation. The Board established rules and made decisions in many labor disputes.

In its Decision No. 119 it laid down sixteen principles of which two are applicable here. (1).

(1) "The right of employees to be consulted prior to a decision of the management adversely affecting their wages or working conditions shall be agreed to by management. This right of participation shall be deemed adequately complied with if and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the management.

"The majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. No such agreement shall infringe however, upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

212 In Decision No. 218 wherein the Pennsylvania Railroad was seeking to control the designation of representatives the Labor Board sharply denied this right. (1).

Decision No. 220 involved a contention of that Railroad that individuals and not labor organizations, should be designated as representatives. This contention was denied. (2).

Dissatisfied with these rulings, the Pennsylvania Railroad appealed from them, attacking both the constitutionality of the act creating the Board and the correctness of its decisions.

On both points the Board was sustained. (3).

(1) "The carrier had no more right to undertake to assume control of the selection of the representatives of the employees than the employees would have had to supervise the naming of the representatives of the carrier, for the statute plainly provides that the employees shall designate and authorize their representatives. In this sophisticated land of popular elections no political party would submit to having its primary held and managed by the opposing party."

(2) "The statute recognizes the existence of organizations of railway employees, and the right of the men to belong to such organizations is no longer seriously questioned in any quarter * * *

It is unjust and unreasonable to seek by methods, direct or indirect, to deprive them of the efficient representation afforded by these organizations, provided, of course, a majority of them desire to be so represented."

(3) "It is said that the Federation is a labor union affiliated with the American Federation of Labor, and that the phrase "organization of employees" used in the act was not intended by Congress to include labor unions. We find nothing in the act to impose any such limitation

if the organization in other respects fulfills the description of the act. Congress has frequently recognized the legality of labor unions. United Mine Workers vs. Coronado, 259 U. S. 344, and no reason suggests itself why such an association, if its membership is properly inclusive, may not be regarded as among the organizations of employees referred to in this legislation. Pa. R. R. vs. Labor Bd., 261 U. S. 72.

213 In the course of the opinion the Chief Justice gives expression to the thought which informs and is the prime purpose of the section of the Act under discussion here, saying:

"Again we think that this question of who may be representatives of employees, not only before the Board, but in the conferences and elsewhere, is and always has been one of the most important of the rules and working conditions in the operation of railroads. Id. p. 83. Pa. R. R. vs. Labor Board, 261 U. S.

It is not surprising then, that when the Labor Board was abolished by the Railway Labor Act of May 20, 1926, in the third clause here under discussion, Congress, in the light of the experience of the past, embodied the principle of natural justice, that representatives of employees, in order to prevent disputes which was the declared purpose of the act, should be truly representative.

Nor can there longer be any doubt that Congress had the power to and that it must, in the interest of public peace and safety, make certain that in the first step in negotiations between the railroad employer and employee (who have long since come to be recognized as

to this instrument of interstate commerce in their hands, not as private persons having the right to exercise "liberty through sheer antipathy" but as trustees of the public) that representatives of the railroad companies should not meet representatives of the employees, nominally elected by them, but in fact under the influence and control of the railroad companies.

I therefore easily find that the legislation in question was not only within the power of Congress to enact, but that it should be liberally construed and applied, so as to give effect to the paramount public convenience subserved by it.

Nor do I think it more debatable that both the letter and the spirit of the statute and of the injunction have been violated.

While it is hard to believe that a railroad and its officials would deliberately seek to set at naught both the legislative and the judicial power of the United States, it is more difficult to avoid the conclusion that the violation of the statute and of the injunction which
214 followed its violation, was the result of a strong and settled purpose to defy both, and that that spirit of heady violence to obtain its ends which has so often exhibited itself in these labor disputes, in the conduct of employees, when the injunction was the other way, is not absent here.

Nor is it possible to reconcile the claim of the defendant railroad that it is not seeking to influence or interfere in the selection of representatives, with the record made in this case, of motives, purpose and activity.

This is no new devising. It must be borne in mind that this is old straw twice unsuccessfully threshed out before the Labor Board, to oust from the position of representation, obtained during Federal control, this Brotherhood. (1).

This present flare up had its seat in that old fire, and there is about its present fierce and steady flame an appearance of purpose and of resolution firmly conceived to again assert the liberty of "mere whim or caprice" that "liberty which is exercised in sheer antipathy and which therefore does not plead strongly for recognition"—which is wholly inconsistent with the claim.

(1) On November 14, 1923, after the Brotherhood had been twice sustained as against the Association of Clerical Employees, the defendant Torian for the Company, wrote Harper as follows:

November 14, 1923.

"At conference yesterday, I advised that the carrier would comply with Decision 1971 of the United States Labor Board, and recognize the organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employees by secret ballot, select other representation."

215 of the defendant of neutrality between these rival associations here put forth. (1).

(1) In Torian's affidavit filed in this cause on July 29, 1927, it is stated:

"Said Texas and New Orleans Railroad Company has never recognized the Brotherhood as the representative of its clerical employees, save and except as required to do so by decisions of the United States Railroad Labor Board, and it is not, and has never been, the purpose or intent of the said railroad company or its predecessors

in the ownership or control of the properties now operated by the railroad company, to recognize or deal with said Brotherhood, except as required to do so by the decisions aforesaid."

The Brotherhood has at all times been extremely radical in its attitude, and has made and presented many unreasonable demands on the railroad company, and while its officers have conducted themselves, and still conduct themselves, as acutely hostile to the interests of the railroad company, the railroad company has not undertaken to cause the formation of the Association, and has never interfered with, influenced or coerced or attempted to interfere with, influence or coerce, the clerical employees with respect to membership in either the Brotherhood or the Association.

Many of the officers and employees of the Railroad Company and particularly the officers and employees the work of whose departments or stations is most directly affected by loyalty, industry and interest in the welfare of the company on the part of clerical employees, have a strong interest in the selection by said employees of an organization to represent them, which will endeavor to co-operate with their employer and to deserve, rather than demand without deserving, favorable action in the matter of wages and working conditions."

916 Many affidavits were submitted on the hearing for the injunction which abundantly established that the activity of the officers and agents of the Railroad Company in securing authorizations was inspired by the company, while the record teems with evidence that the Association was the favored child of the defendant company, and if not created, was largely sponsored, promoted and maintained by it.

The evidence of activity in violation of the statute and of the injunction occurring since are more numerous, cogent and powerful.

Not only did the Railroad Company, with a sheer and gratuitous wantonness of spirit, reject the offices of the Board of Mediation, created and operating under this same Act, before whom at the time of the filing of this suit a wage dispute initiated by the Brotherhood was pending (1) but before the ink was hardly dry upon the order of injunction proceeded to nullify it by recognizing as truly representative the Association, all of whose authorizations had been filed with the defendant Torian before this suit was filed, and the most of which had been obtained, as found by the Court, by the use of means in violation of the statute. And this recognition was accorded, and action taken under it, in the face of the statute (2) and of Torian's affidavit filed herein, that he would

(1) G. C. Waid by telegram of August 2, requested the Board of Mediation to relinquish jurisdiction. This request by telegram of August 4, the Board declined, and on August 4, Waid telegraphed the Board as follows:

"Brotherhood of Railway and Steamship Clerks does not represent a majority of our clerical employees, and we will have no further dealing with them. We are satisfied can make amicable adjustment with Association of Clerical Employees, Southern Pacific Lines, which does represent majority of clerical employees, and it is the opinion of our counsel, after careful consideration of the law, that there is nothing in the law or in our present situation which can or should prevent us from reaching agreement with organization last mentioned.

The inference in your telegram that we can deal only with the Brotherhood seems to us and our counsel to be obstructive, rather than helpful."

And thereafter, its offices were ignored and its tender of continuing services of Sept. 28 to A. D. McDonald, President and of October 11 to H. M. Lull, Vice President, were declined.

(2) Section 6 of the Act provides:

"In any case where the services of the Board of Mediation had been requested by either party, or said Board has proffered its services, rates of pay or rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act by the Board of Mediation."

217 not consider these authorizations until the Board had so relinquished (1).

While with a fell and steady purpose, by striking at the heads of the Brotherhood and of those who were active in it by depriving them of their positions and power, to kill what it had scotched, it set itself about, with a callous indifference to the spirit as well as the letter of the statute and the order, the task of not only more firmly seating the Association of Clerical Employees, but of crushing any effort on the part of other employees to secure other representation, if they so desired, in the face of Torian's affidavit filed in the original hearing (2).

In short, upon a foundation laid in direct violation of the statute, they have sought to erect a superstructure of exclusive representation, and in the face of a stat-

ute and an injunction designed to secure the observance of the fundamental maxim, Audita alteram partem, they have gone about to arrange it so that the railroad would be in a position of surely having a vote on both sides of the table, its own side and that of its employees. (3).

(1) In Torian's affidavit filed July 28, 1927, he said:

"The Association of Clerical Employees claims to represent the majority of said employees under written authorizations from such majority. The officers of the Association have tendered to affiant in his official capacity, written authorizations claimed to be held by the Association of a majority of said clerical employees, but affiant has declined to receive or act upon the same until a certain pending request made by the Brotherhood shall have been disposed of or dismissed by the Board of Mediation. When the said pending matter shall have been disposed of or dismissed by the United States Board of Mediation, it is the purpose of the said affiant to consider the request."

(2) "It is not a fact that, should a majority of the clerical employees of the Railway Company, other than those in general office elect to be represented by the Association and should affiant and the Railroad Company deal with the Association and not with the Brotherhood, the clerical employees now members of the Brotherhood will be forced to withdraw from membership therein, or that the Brotherhood will of necessity, be dissolved."

(3) Letter of August 12, 1927.

T. & N. O. Railroad Notice No. 551.

Lafayette, La., Aug. 12, 1927.

Passenger Conductor: If Annual Pass A 25751 favor H. W. Harper, Timekeeper, residence San Antonio, Texas, S. P. Lines is presented, take up, collect full fare and return to this office.

(Signed) R. M. GLOVER,
Superintendent.

the dropping of Harper from the rolls in September and Walker on October without notice or hearing to them. Notation on Harper's record—"Personal Record to September 24, 1927, dropped from the roll as he has performed no service since 1923."

218 In view of all these facts, and of the further controlling and dominant fact that in the face of the agreement and understanding that the Brotherhood should continue to represent the clerks until by secret ballot other representation was selected, it appears that organizers of the Association of Clerical Employees have been sent out on company time and on company pay and with company consent and approval, to organize the Association, while officers of the Brotherhood have been discharged from the service and excluded from wage conferences members of the Brotherhood have had their pay docked for the time spent on its business, and other members have been dismissed from the service (1) it would be a sticking in the bark to discuss in detail the evidences with which this record teems of a deliberate violation of this injunction, legalistic perhaps through the advice of counsel, but none the less a violation. (2).

(1) The answer of the Railroad Company Par. V admits that the representatives of the Railroad Company did exclude Harper at the direction of Torian "because Harper was not wanted," the Association of Clerical Employees being the sole recognized representative. The answer admits the discharge from service of Harper, the taking up of his pass (Par. X and XI) the dropping of Walker, the docking of pay of certain of the Brotherhood members while making no deduction whatever from the pay of the officers of the Association of Clerical Employees (answer Par. IX), the discharge of the individual employees Stallings, Hudson and Ginsburg, upon however, claimed legal grounds.

(2) The following testimony of Waid upon this matter is illuminating; Q. Isn't it a very unusual situation for the company to have men active like that, not doing any work and still carrying them on the pay roll? A. No. We frequently detach men from the service for the purpose of handling matters that are for the general good. For instance we send men to an organization for fuel conservation each year. Q. I do not mean that; I mean in these employees organizations—was there ever a case before where the railroad company kept a representative of the employees on the payroll and allowed them to stay there without working? Not any case before? A. Oh, I presume there have been where they were doing work that was worthy of such consideration. Q. I know, but the work they are doing now is not worthy of any consideration by the company, is it company work? A. Yes, it is very much in the interest of the company to secure a proper representation of interests. And I should think that the company would be very much interested in that. Q. So these men are

really working for the company in organizing and promoting this association? A. No, I would not say that they are so employed. Q. What do you say? A. They merely go, so far as I know— Q. What I mean, you said they were doing work which is greatly to the interest of the company in promoting and insuring friendly organizations, that is correct? A. Yes, that is correct—We feel so. Q. And you are maintaining them still on the pay roll in order to enable them to do that? A. I have not said they are on the payroll. Q. I am asking you. Mr. Tallichet: If it will clarify the situation, I will say that I got the information not from Mr. Waid, but Mr. Torian that we made no deductions whatever from the pay of these men.

219 In the view which I have taken that the authorizations on which the company acted were procured in violation of the law, it would serve no purpose to extend this opinion further by a discussion of the hypothesis whether, if lawfully obtained, they were sufficient in number.

Entertaining that hypothesis, however, for a moment, I think it plain, that there were not sufficient authorizations of those qualified to vote, to constitute a majority. But I think it further plain that irrespective of the number and of the legality of their obtaining, it was never contemplated that representation of a class could be founded upon conglomerating into a ballot for an Association, of Clerical Employees these heterogeneous requests for higher pay.

It is abundantly clear that the injunction issued to prevent such violation has been completely nullified and that a remedial order should be entered, completely disestablishing the Association of Clerical Employees as now

constituted through the action of the defendant, as representative of their fellows, and re-establishing the Brotherhood as such representative until by proper ballot the employees without dictation or interference, vote otherwise, such order to further provide for the restoration to their positions and privileges of the officers of the Brotherhood, and the restoration without loss of those of the employees whose discharge, though nominally predicated upon a violation of the rules, was really grounded upon antipathy because of their action on behalf of the Brotherhood, and that the matters here involved should be referred to the proper law officers of the Government for them to determine whether a proceeding for criminal contempt in the name of the United States should be begun.

Houston, Texas, February 6, 1928.

J. C. HUTCHESON, JR.,
Judge.

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220 ORDER OVERRULING DEFENDANT'S EXCEPTIONS AND MOTION TO DISMISS AND STRIKE OUT PLAINTIFFS' INFORMATION ALLEGING CONTEMPT OF COURT.

Filed February 10, 1928.

(Title Omitted.)

Now on this the 4th day of November, A. D. 1927, came on to be heard the exceptions and motion to dismiss and strike out the information filed herein by the plaintiffs, said exceptions and motion having been filed herein on this day, which was duly presented to the

Court and argued by Solicitors for the defendants, the Court thereupon overruled each and all said exceptions and motions, to which said action the defendants each and all then and there in open Court excepted.

Enter:

J. C. HUTCHESON, JR.

Indorsements: Equity No. 314. United States District Court, Southern District of Texas, Houston Division. Brotherhood of Railway and Steamship Clerks, etc., et al., vs. Texas and New Orleans Railroad Company, et al. Order overruling defendant's exceptions and motion to dismiss and strike out plaintiffs' information alleging contempt of Court. Filed 10th day of Feb., 1928. L. C. Masterson, Clerk, by J. L. Sexton, Deputy.

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221 ORDER ON MOTION TO SHOW CAUSE, ETC.

Filed Febry. 11, 1928.

(Title Omitted.)

This cause came on to be further heard at this term upon the motion of the complainants filed herein for a rule against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, and J. G. Torian, to show cause why an attachment for contempt of this Court should not issue against them, and why they should not be punished for contempt of this Court: and

It appearing to the Court that upon complainants' bill heretofore filed in this Court, and the appearance and answer of said defendants and the hearing had thereon, this Court, on August 3, 1927, entered a formal order

enjoining and restraining said defendant Texas and New Orleans Railway Company, its officers, ser-
222 vants, and agents, from in any way or manner interfering with, influencing, intimidating or coercing the said complainants and approximately 1700 clerical employes of said defendant Railroad Company, with respect to their free untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employes and the defendant railroad company, and further restraining said defendant railroad company, its officers, servants and agents, from in any way or manner interfering with, influencing, intimidating or coercing the said complainants, or any of said clerical employes, with respect to their free and untrammeled right of self organization—all as per decree of this Court entered August 3, 1927, of which decree and restraining order said defendants had due and timely notice, and with the nature, scope and extent of which they were fully acquainted, and upon complainants' petition and motion filed herein, alleging said defendants to have violated the Court's order, and said defendants having been cited to answer said motion and to show cause why they should not be adjudged in contempt of this Court and its order, and each of said defendants having duly and personally appeared herein and answered and upon a full hearing thereon, including affidavits and oral testimony by the defendants, and upon consideration thereof, it is ordered, adjudged and decreed, as follows:

That the defendant, Texas and New Orleans Railroad Company at all material times acted and is still acting, with respect to the matters involved herein, by and

through its executive, directive and supervisory officers, H. M. Lull, G. S. Waid and J. G. Torian; that the said H. M. Lull, G. S. Waid and J. G. Torian at all material times acted and are still acting, with respect to the matters involved herein, for and on behalf of said defendant railroad company, as the executive, directive and supervisory officers of said defendant railroad company;

223 that said defendant Texas and New Orleans Railroad Company is still represented and controlled, with respect to the matters involved herein, by the said H. M. Lull, G. S. Waid and J. G. Torian, who have the power and authority, on behalf of said defendant railroad company, to direct and control its conduct and actions with respect to the matters herein involved;

That said defendants, Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, and each of them have disobeyed and violated the orders of this Court, contained in said temporary injunction and restraining order, and each of said defendants did thereby commit contempt of this Court and each of said defendants is, therefore, in contempt of this Court, and by reason of such contemptous conduct each of said defendants should be punished as for contempt of Court as hereinafter provided and/or as might be hereafter directed—all as more fully set forth in the opinion of this Court filed herein;

That among other things done by said defendants were certain acts and conduct in violation of law and in disobedience to this Court's restraining order and that in order to purge themselves of said contempt said defendants, and each of them, must file in the office of the

Clerk of this Court a sworn statement within 10 days from the date hereof, agreeing that they and each of them will do, perform and accomplish, or cause to be done, performed and accomplished, the following acts to restore to the complainants herein and said clerical employes on whose behalf this suit was instituted and prosecuted, the rights and status of which they have been deprived by reason of such unlawful conduct and violation and disobedience of the orders of this Court, and the contemptous conduct herein referred to, and begin in good faith within said 10 day period to do, perform and accomplish, or cause to be done, performed and accomplished, the following acts, and thereafter
224 diligently and in good faith proceed to forthwith complete and accomplish the said following acts:

(1) Completely disestablish the Association of Clerical Employes as it is now constituted as the recognized representative of the Clerical employes of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana.

(2) Cease to permit officers and representatives of said Association to organize, promote, manage, and attend to the business of said Association, or any organization of said clerical employes hereafter formed, on the said Texas and New Orleans Railroad Company's time and pay, and at its expense and under the aegis of the authority of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, unless a similar privilege is accorded to the officers and representatives of complainant Brotherhood.

(3) Reinstate and re-establish the said complainant Brotherhood as the representative of said clerical employes in all matters relating to their employment, by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employes by a secret ballot taken in accordance with the further directions of this Court, and without the dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, shall choose another representative or representatives.

(4) Restore H. W. Harper and John W. Walker to the service of said Texas and New Orleans Railroad Company without prejudice and without loss of seniority rights.

(5) Restore to said H. W. Harper and John W. Walker the pass privileges over the lines of Texas and New Orleans Railroad Company which they enjoyed prior to August 6, 1927.

(6) Restore R. E. Stotzer, B. G. Hudson and Charles Ginsburg to the service as employes of the said Texas and New Orleans Railroad Company without prejudice and without loss of seniority rights, and make whole said Stotzer, Hudson and Ginsburg for any losses of pay they have sustained by reason of their discharge in violation of the temporary injunction herein, and in contempt of this Court.

(7) Pay all costs of Court accrued in connection with this contempt proceeding, and further pay to Fulbright, Crooker & Freeman, as attorneys for the complainants herein the sum of Two Thousand Dollars ($2,000), which is allowed to said complainants herein to cover reasonable and necessary attorney fees and expenses herein in connection with these contempt proceedings.

225 And the Court having found and held that it is within the power and authority, and is the duty of, the said H. M. Lull, G. S. Waid and J. G. Torian, as such executive, directive and supervisory officers of said Texas and New Orleans Railroad Company, to do, perform and accomplish each and all of said matters hereinabove set forth, it is further ordered that if any one or all of the defendants H. M. Lull, G. S. Waid and J. G. Torian fail or refuse to do, perform and accomplish each and all of the things hereinabove set forth, in the manner and within the time limit hereinabove prescribed, then such defendant or defendants so failing or refusing shall be committed to and confined in the County Jail of Harris County, Texas, until such time as such defendant or defendants so failing or refusing shall purge himself or themselves of said contempt, or shall show themselves incapable of complying with this order of this Court or otherwise show themselves entitled to be relieved of this order and directions of this Court. And the Clerk of this Court is hereby ordered and directed that on or after February 22, A. D. 1928, upon the filing of an affidavit by complainants herein in the office of the Clerk of this Court, wherein it is stated in substance that the said H. M. Lull, G. S. Waid and J. G. Torian, or either of them, have failed within the prescribed time and in the prescribed manner to purge themselves of contempt of this Court, then to issue a writ of attachment

against the said H. M. Lull, G. S. Waid and J. G. Torian, or such of them as said affidavit may allege had so failed, said writ of attachment being directed to the United States Marshal for the Southern District of Texas, commanding him to take into his custody the said H. M. Lull, G. S. Waid and J. G. Torian, or such of them as said affidavit may allege had so failed, and them safely keep in said County Jail of Harris County, State of Texas, until such time as the said H. M. Lull,
226 G. S. Waid and J. G. Torian, or such of them as said affidavit may allege had so failed, shall have purged themselves of said contempt of this Court in the manner herein prescribed, or until such time as this Court may, by its order, otherwise direct their discharge, and said United States Marshal is hereby directed to execute said writ of attachment forthwith upon its receipt from the Clerk of this Court.

It is further ordered, adjudged and decreed by the Court that whenever the said H. M. Lull, G. S. Waid and J. G. Torian, or any of them, shall purge themselves of the contempt of this Court in the manner herein prescribed, and within the time herein prescribed, then upon a proper showing of such purgation such defendant so purging himself shall be discharged and freed from contempt of this Court.

To all of which foregoing order said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, each and all of them then and there in open Court excepted.

Enter:

J. C. HUTCHESON, JR.,
United States District Judge.

Dated February 11, 1928.

227 ORDER DISCHARGING W. R. MANN FROM RULE IN CIVIL CONTEMPT.

Filed Feby. 11, 1928.

(Title Omitted.)

On Information and Rule for Contempt of Court.

And now on this the 10th day of February, A. D. 1928, came W. R. Mann, one of the defendants in the above entitled and numbered cause and declared to the Court that as shown by his answer and affidavit heretofore filed herein, he is an assistant superintendent on the El Paso Division of Texas and New Orleans Railroad Company and without power or authority to do or cause to be done any of the things ordered and decreed to be done by the defendants herein, and that the things done by him and involved in this proceeding were done solely under the direct orders of his superior officer of said Railroad Company.

Upon consideration of which it is ordered, adjudged and decreed by the Court that the said W. R. Mann be discharged from the rule to show cause as for contempt of Court h ofore entered herein, in so far as the proceedings herein for civil contempt are concerned.

Done at Houston, Texas, this the 10th day of February, 1928.

J. C. HUTCHESON, JR.,
United States District Judge.

228 ACCEPTANCE IN FORM OF AFFIDAVIT OF H. M. LULL, G. S. WAID AND J. G. TORIAN.

Filed Febry. 18, 1928.

(Title Omitted.)

H. M. Lull, G. S. Waid and J. G. Torian, defendants in the above cause file this affidavit as required by the decree of this Court of February 11, 1928, adjudicating them guilty of contempt. The said Lull appears herein individually and as Executive Vice-President of the Defendant Texas and New Orleans Railroad Company.

I.

Pending further orders of this Court and pending appeals that may be taken from this Court to the Circuit Court of Appeals or the Supreme Court of the United States, they will do and perform the things required of them in said decree. With the permission of the Court however, they deposit along with this affidavit with the Clerk of the Court, the sums of money to be paid, as required in the sixth and seventh paragraphs on the fourth page of said decree and request the Clerk to hold same pending further orders of the Court.

H. M. LULL,
G. S. WAID,
J. G. TORIAN.

Sworn to and subscribed by H. M. Lull individually and as Executive Vice President of the Texas and New Orleans Railroad Company and by G. S. Waid and J. G. Torian before me the undersigned Notary Public this 17th day of February, A. D. 1928.

O. G. KEHRER,
(Seal) Notary Public in and for Harris County, Texas.

230 APPLICATION TO DISSOLVE TEMPORARY INJUNCTION AND RESTRAINING ORDER.

Filed Febry. 20, 1928.

(Title Omitted.)

In the above entitled and numbered cause now come the defendants, Texas & New Orleans Railroad Company, H. M. Lull, G. S. Wadd and J. G. Torian, by their counsel and move the Court to dissolve the temporary injunction or restraining order heretofore granted in this cause and entered on August 3rd, 1927, or in the alternative, in the event the motion to dissolve should not be granted but should be overruled, then to modify said temporary injunction and restraining order as hereinafter prayed for.

As grounds for the dissolution of said temporary injunction and restraining order these defendants aver:

1.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because there is no power conferred upon the Court to grant such injunction by any statutory provision of the United States, nor do complainants bring themselves within any settled or customary rules of practice in Courts of equity authorizing and empowering Courts to grant such temporary injunction or restraining order.

2.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause because neither the Railway Labor Act in itself, nor any law enacted by Congress, nor any custom or recognized rules of equity Courts contemplate or permit the issuance of temporary injunctions or restraining orders in controversies between an employer
231 such as the defendant Railroad Company is and employees such as the complainants are.

3.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because the Railway Labor Act, under the terms of which the Court has apparently granted the temporary injunction and restraining order, is self executing and self operating and is inoperative except by agreement of parties, in absence of which neither party may invoke the aid of the Court and under its terms and provisions it is manifest that the Court has no power by injunction or by any other means, to direct, command or interfere with the activities and negotiations of the employer on the one hand and the employees on the other in the matters covered by said Railway Labor Act.

4.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because it is the manifest intention of the Congress of the United States as evidenced by the Railway Labor Act and the provisions of Section 52, Chapter 29

of the United States Code, to prevent and to prohibit the issuance of injunctions and other coercive orders and decrees in controversies and disputes between employees such as the complainants are, and employers such as the defendants are.

5.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because the complainants Bill of Complaint and the exhibits attached thereto and made a part thereof are insufficient as a matter of law to invoke the equitable powers and jurisdictions of this Court or to authorize this Court to grant the equitable relief prayed for and to issue its temporary injunction and restraining order as has been done in this case, it appearing therefrom that no property rights of the complainants are involved and no irreparable dam-
232 age would be sustained by said complainants if said injunction were to be denied or dissolved. That as reflected by the complainants Bill of Complaint the controversy was one between two rival claimants for recognition by the Railroad Company to represent employees of the class described in said Bill of Complaint and that such recognition could confer no benefits or property rights on the complainants, it appearing from the terms of the Railway Labor Act itself that in each successive step to the adjustment board, to the mediation board and on to arbitration, depended upon the voluntary acts of the parties, and that no power, authority or right is conferred by said Act upon the representative of any class of employees to compel the employer, the Railroad Company, to grant any demand or to make

any kind of agreement and as the recognition of any one group of persons over another group of persons could clothe them with no power or authority nor create any rights in them to compel the employer, Railroad Company, to any particular course of action, the designation or recognition of any such group, or the failure of the employer, Railroad Company, to recognize or designate any particular group as representatives of the class, could not in law affect any property right or inflict irreparable damage or injury upon the complainants.

6.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this Court because the defendant Railroad Company and its executive officers have the inherent and constitutional right to converse and communicate with the employees of such Railroad Company and to express to such employees the wish of the employer and to direct such employees as to the desires and purposes of such employer in the conduct of the employer's business in the line of such employee's relation to the employer. That any act of Congress or order of Court which prevents or tends to prevent the free exercise on the part of the employer of such rights, contravenes the inherent rights of the employer and the rights of such employer granted to it under the terms of the Constitution of the United States. That if the Act of Congress under which the Court is acting attempts or purports to confer any such
233 power as the Court is asserting, then it is an unconstitutional interference with the right of free speech, or free communication between employer and employee and a deprivation of property and property rights without due process of law.

7.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant Railroad Company and its executive officers have the right to seek to influence their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

8.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant Railroad Company and its executive officers have the right to interfere with their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

9.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant Railroad Company and its executive officers have the right to coerce their em-

ployees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of
234 such employer, their attitude as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

10.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause because no allegation of any paragraph of complainant's bill of complaint nor all of the allegations contained in the bill of complaint, taken as a whole, allege a cause of action for the extraordinary relief sought by the complainants herein in that it appears therefrom that no statutory right or right created by law or by any rule of equity exists in the complainants, nor any statutory duty nor any duty imposed by law or by equity, upon the respondents has been violated or is threatened with violation.

11.

The Honorable District Court is without power to grant a temporary injunction or restraining order in this cause because the proof introduced upon the hearing of the application for the temporary writ of injunction does not establish a cause of action for the extraordinary relief sought by the complainants herein, in that it appears therefrom that no statutory right or right created by law or by any rule of equity exists

in the complainants, nor any statutory duty nor any duty imposed by law or by equity upon the respondents has been violated or is threatened with violation.

12.

Respondents move the Court to dissolve and set aside the contempt order and decree entered herein against them in this cause on the 11th day of February 1928, and for cause thereof say:

13.

The Court erred in holding respondents in contempt as set forth in said decree for each of the
235 reasons and grounds assigned in the preceding part of this motion as grounds for dissolving the temporary injunction and restraining order heretofore entered in this cause, on August 3rd, 1927.

14.

Because the Court erred in holding the respondents in contempt because the said order and decree in general terms enjoined and restrained the respondents from interfering, influencing, intimidating or coercing their employees in the matter of selecting representatives and in the matter of the self organization of said clerks and no act or thing done by the respondents or either of them since the making and entering of said temporary injunction and restraining order was in violation of the terms of said decree, but each and all of the things done by the respondents and which the Court has now ordered the respondents to undo were none of them in violation of said injunction or restraining order but were all consistent with the observance thereof and were acts and things done with the rights of the respondents.

15.

The Court erred in holding the respondents in contempt of said injunction and restraining order, because the Court made no finding of a violation of said order in any specified particular or respect, but made a general finding of a violation of said order, whereas, if in fact said injunction had been violated by respondents, a specific finding of each particular violation of such order should have been made by the Court, to the end that each and all of said respondents might have been advised as to the specific thing done by each of them which the Court found was in disobedience of said order.

16.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to—

"Completely disestablish the Association of Clerical Employees as it is now constituted as the recognized representative of the clerical employes of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana."

236 because the Court was without power to require the doing of this thing because the acts of the respondents in recognizing and dealing with the Clerk's Association were not a violation of the temporary injunction and restraining order heretofore issued in this case and further because these acts were in the exercise of a valid legal right resting in respondents.

17.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to

"Cease to permit officers and representatives of said Association to organize, promote, manage and attend to the business of said Association or any organization of said clerical employees hereafter formed, on the said Texas and New Orleans Railroad Company's time and pay, and at its expense and under the aegis of the authority of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, unless a similar privilege is accorded to the officers and representatives of complainant Brotherhood;"

because said acts were not in violation of said injunction and further because they were done in the exercise of rights resting in the respondents, and further because the Court was without power to require respondents to accord to the representatives of the Brotherhood the same treatment they might elect to accord to the representatives of the Association.

18.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Reinstate and reestablish the said complainant Brotherhood as the representative of said Clerical Employees in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employes by a secret ballot taken in accordance with the further directions of this Court and without dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian shall choose another representative or representatives."

because the acts done by the respondents were not in violation of the Court's injunction and further because the respondents cannot lawfully be required to reinstate the Brotherhood as representative of its employees, the Railway Labor Act expressly conferring upon the Railroad Company as the employer the power and right to deal with any employes or group of employes with reference to wages, conditions of service, etc., by contract or otherwise and it does not compel the respond-
237 ents to enter into contracts or agreements or even to recognize any particular representatives or groups of persons as authorized to act for or represent an entire class of employees contrary to the wishes of all or any part of said class of employees.

19.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Reinstate and re-establish the said complainants Brotherhood as the representative of said clerical employees in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this Court and without the dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, shall choose another representative or representatives";

because the Court is without power by its order and decree through a contempt proceeding or otherwise to order and direct the respondents to recognize or deal with a particular group, through the Brotherhood or representatives of the Brotherhood, concerning wages or conditions of service, etc., for any particular or specified period of time and no Act of Congress nor any other law confers upon a majority of any class of employees the right to act for all of such employees of such class, irrespective of the wishes of some of such class of employees who desire to be represented in some other manner.

20.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to—

"Reinstate and re-establish the said complainant Brotherhood as the representative of said clerical employees in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this Court and without the dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, shall choose another representative or representatives";

because the Court has not the power, through contempt proceedings or otherwise, to order or direct a
238 whole class of employees to hold an election by secret ballot or otherwise to determine either questions of policy or representation or the designation

of any particular organization or group of individuals to represent them in negotiations, dealings or contracts with the employer railroad company.

21.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Restore H. W. Harper and John W. Walker to the service of said Texas and New Orleans Railroad Company without prejudice and without loss of seniority rights";

because the Court has not the power and authority through contempt proceedings or otherwise to compel the respondents to place H. W. Harper and John W. Walker on the roster of employees of the Texas & New Orleans Railroad Company nor, as neither of them were in the service of the said Railroad Company on June 1st, 1927, can the respondents be required to restore them to service. No contract relation of any kind existed between the respondents and said Harper and Walker and the most that can be said is that as a matter of grace, while the said Harper had been out of the respondent Railroad Company's employ for four years or more and the said Walker had been out of the employ of the respondent Railroad Company two years or more, their names had been permitted to remain on the roster of employees, yet this created no contract right nor any other character of obligation enforcible through the Courts in any character of proceeding to compel the continuation of their names on such roster or roll of employees.

22.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Restore to said H. W. Harper and John W. Walker the pass privileges over the lines of Texas and New Orleans Railroad Company which they enjoyed prior to August 6, 1927";

because the pass privileges heretofore enjoyed by the said Harper and the said Walker were gratuities and not based upon any contractual right or obligation and the Courts are without power, through contempt proceedings or otherwise to require respondent
239 Railroad Company to continue a gratuity or act of grace theretofore inuring to the benefit of said Harper and Walker; but the transportation of persons over respondent's lines of railway is a source of revenue for which it is entitled under the law to charge and any order or decree of Court, through a contempt proceeding or otherwise, requiring said Railroad Company to extend free transportation privileges to one not entitled thereto as a matter of law or by contract right, is a deprivation of its property without due process of law and violative of the rights of the respondent guaranteed to it under the Constitution and laws of the United States.

23.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Restore R. E. Stotzer, B. G. Hudson and Charles Ginsburg to the service as employees of the said Texas and New Orleans Railroad Company without prejudice and without loss of seniority rights and make whole said Stotzer, Hudson and Ginsberg for any losses of pay they have sustained by reason of their discharge in violation of the temporary injunction herein, and in contempt of this Court";

because there is no law which requires the respondent Railroad Company to retain in its employ any particular person, and it has the inalienable right of selecting and retaining in its employ only such persons as it may choose to so select, employ and retain and the respondent had the right to discharge said Stotzer, Hudson and Ginsberg for cause or without cause, so long as it violated no contract existing between it and them and no such contract obligation is averred in the pleadings or found by the Court to exist as a fact. The respondent cannot lawfully be compelled to restore to service or to continue in its service or to accept as an employee any person contrary to its own wishes or inclination or contract rights and in ordering Stotzer, Hudson and Ginsberg restored to service and in ordering the respondent Railroad Company to make whole to them any losses of pay they had sustained, the Court has exceeded its power and authority. The things required to be done by the respondents as set forth in said subdivision 6 of the Court's decree of February 11th contravene the constitutional rights of said respondents and constitute a deprivation of their
240 property and property rights without due process of law.

24.

The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Pay all costs of Court accrued in connection with this contempt proceeding and further pay to Fulbright, Crooker & Freeman as attorneys for the complainants herein, the sum of Two Thousand Dollars ($2,000.00) which is allowed to said complainants herein to cover reasonable and necessary attorney fees and expenses herein in connection with these contempt proceedings";

because there has not been an infraction or disobedience on the part of the respondents of the Court's temporary injunction or restraining order and said respondents have not been guilty of contempt of this Court, nor disobeyed the orders of this Court so as to create any liability on the part of the respondents or either of them to the complainants for any costs of Court or any attorneys' fees or other expenses incident to the prosecution of this proceeding, in that the respondents in the doing of the things which the Court has held or found to be a violation of its decree and therefore as being a contempt and disobedience of its order, were all matters and things which were done in good faith with no intention of violating the decrees and orders of this Court, and in the exercise of legal and constitutional rights of these respondents.

25.

The Court erred in requiring the defendants to pay the sum of $2000.00 to Fulbright, Crooker & Freeman as costs and expenses incurred by the Complainants in

the contempt proceeding because the order directing and requiring this to be done is in excess of the discretionary power of the Court in such matters and in abuse of such discretionary power, and there is no basis of pleading or fact in this record to support such order or such allowance.

26.

The Court erred in ordering, directing and requiring respondents not to recognize but to disestablish the Association of Clerical Employees, because the respondents and representatives of said Association of Clerical Employees heretofore entered into contracts and agreements relating to wages and conditions of service, each acting in good faith and not in intended violation, or violation of this Court's orders and decrees but in the exercise of constitutional and statutory rights and powers and such contracts and agreements cannot be destroyed by an order of this Court without a hearing with all of the interested contractual parties before the Court, nor without due process of the law of the land.

241

27.

The Court erred in holding the respondents in contempt because of the discharge of Stotzer, Hudson and Ginsberg, because the evidence in this case shows that each of said persons were discharged for cause, as the employer has a right to do, the facts, conditions and circumstances surrounding the discharge of each of said employees having been fully shown by such evidence and further because the proof in this case shows affirmatively that neither of the defendants Lull, Waid or Torian had any part in the discharge of said employees,

it appearing from such evidence that their respective discharges were upon orders from the superintendents of their respective divisions without consultation, conference or reference to the said defendants and so far as this record discloses, without knowledge on the part of said defendants of any activity on the part of said three employees in the Brotherhood of Clerks and because the evidence in this case shows that said employees were not discharged on account of their membership or interest in the Brotherhood of Clerks nor because of any activity on their part in this controversy.

28.

In the event the Court should overrule the motion to dissolve the temporary injunction and restraining order as hereinbefore prayed for, and only in that event, and in view of the construction and interpretation given by the Court to the temporary injunction and restraining order entered herein on August 3rd, 1927, these defendants move the Court to modify said restraining order in the respects hereinafter set forth to construe and interpret it in accordance with such modifications.

242 29.

Defendants move the Court to modify said temporary injunction by authorizing and permitting the defendants to recognize and deal with the Association of Clerical Employees as the recognized representative of the Clerical Employees of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana.

30.

Defendants move the Court to modify said temporary injunction by authorizing and permitting the defendants to deal with its clerical employees individually and by a group or groups represented by individuals or members of the Association of Clerical Employees and other such agencies and means, agree upon settlement of disputes and adjust same by contract and agreement as they may mutually establish in accordance with the provisions of the second subdivision of Section 3 of the Railway Labor Act.

31.

Defendants move the Court to modify said temporary injunction so as to permit officers and representatives of the Association of Clerical Employees of the defendant Railroad Company to organize, promote, manage and attend to the business of said Association or any organization of said clerical employees hereafter formed on the time and pay of the said Texas & New Orleans Railroad Company and at its expense and under its authority and the authority of its executive officers and without the defendant being required to extend a similar privilege to the officers and representatives of the complainants herein.

32.

Defendants move the Court to modify said temporary injunction so as not to require defendants to reinstate and re-establish the complainant Brotherhood as the representative of the defendants' Clerical Employees in all matters relating to their employment by the Rail-

road Company, disputes as to pay, working conditions, etc., substantially as the status was on June 1st, 1927, but that defendants be left free to recognize said Brotherhood as it may see fit.

243 33.

Defendants move the Court to modify said temporary injunction so as not to require the holding of a secret ballot by the Clerical Employees of the defendant Railroad Company under the direction of this Court or otherwise, for the purpose of determining representative or representatives of such class of employees.

34.

Defendants move the Court to modify said temporary injunction so as not to require the defendants to restore H. W. Harper and John W. Walker to the service of said Railroad Company or to their positions on the roster of employees of said Railroad Company without prejudice and without losses of seniority rights, but that the defendant be left free to remove the names of such employees who are not now and have not been for several years past in the active service of the defendant, from the roster of employees of the defendant Railroad Company.

35.

Defendants move the Court to modify said temporary injunction so as not to require the Railroad Company to restore R. E. Stotzer, B. G. Hudson and Charles Ginsberg to the service of the defendant Texas & New Orleans Railroad Company under any conditions, not

to require their restoration to such service without prejudice and without loss of senority rights and that said defendants be not required to make whole said Stotzer, Hudson and Ginsberg for any losses of pay they may have sustained by reason of their discharge from the service of the Railroad Company and that said injunction be modified, construed and interpreted as permitting the defendants to discharge from the service of said Railroad Company any employee in its service for cause satisfactory to said Railroad Company or its executive officers; the modifications of said injunction herein sought being essential for the proper conduct of the public service the defendant is required to perform and essential to the preservation of discipline in the conduct of both its private and public business.

244 36.

Defendants move the Court to modify said injunction so as not to require the defendants to give to H. W. Harper and John W. Walker free passes over and upon the lines of railroad of Texas & New Orleans Railroad Company because said persons have no contract right or other right thereto and the issuance of free transportation is a matter of grace.

That in requiring such passes to be issued to said Harper and Walker the defendant Railroad Company will be, and is, deprived of its property and property rights without due process of law.

Prayer.

Wherefore, said defendants pray that said temporary injunction be dissolved, that said decree and order in the contempt proceeding wherein defendants were found and held in contempt be dissolved, set aside and held

for naught and in the alternative, in the event said injunction is not dissolved, then for a modification of said injunction as herein above prayed for and for all such orders and decrees granting to defendants all and every other relief to which they may be entitled in the premises.

J. H. TALLICHET,
C. R. WHARTON,
C. L. CARTER,
Attorneys for Defendants.

BAKER, BOTTS, PARKER & GARWOOD,
Of Counsel.

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245 FIRST AMENDED MOTION TO DISMISS COMPLAINT.

Filed March 1, 1928.

(Title Omitted.)

Comes now Texas & New Orleans Railroad Company, respondent in the above entitled and numbered cause, with leave of the Court, files this its First Amended Motion to Dismiss and Strike Out the Bill of Complaint, and on the record, pleadings and files in said cause, move the Court to dismiss the complaint upon the following grounds, to-wit:

1.

It appears from the Bill of Complaint that complainants are invoking the jurisdiction of this Court under the provisions of the Act of Congress known and cited

as the Railway Labor Act, whereas said Act confers no power or jurisdiction upon the Court except upon the agreement of the parties, either through the act of a Board of Mediation voluntarily consented to, or the act of a Board of Arbitration voluntarily consented to, and filed with the Federal District Court, it appearing from the complainants' allegation that none of these things have happened, but in fact that no agreement has been arrived at and the granting of the relief prayed for would be in derogation of the provisions of Section 52, Chapter 29, of the United States Code.

2.

It appears from the allegations in the Bill of Complaint that Federal jurisdiction of this action is not predicated upon diversity of citizenship, nor is there any allegation showing that the subject matter
246 of this controversy is of value sufficient to confer Federal jurisdiction and that no Act of Congress confers upon the complainants the right to bring such an action, nor is it an action arising under the Constitution and laws of the United States.

3.

It appears on the face of the complaint that complainants are not entitled, nor are any of them entitled, to the relief prayed for by this complaint against the defendants, nor to any relief arising from the facts alleged in said complaint, because the facts stated do not make a case coming within the well recognized rule for equitable relief, in that there is no showing of probable irreparable injury to property or to rights of property belonging to these plaintiffs.

4.

It appears upon the face of plaintiffs' Bill of Complaint that the matter of which they complain is a dispute between employers and employees with reference to terms or conditions of employment, and that there is no necessity for an injunction to prevent irreparable injury to property, or to a property right; therefore the sole relief prayed for in the complaint is forbidden by Title 29, Section 52, United States Code.

5.

It appears from the Bill of Complaint that complainants are not authorized to act under the Railway Labor Act because the complainant Brotherhood nor the individual complainants are employees of the respondent Railroad Company under the definition of employee as contained in the Railway Labor Act, but under the allegations in the Bill of Complaint the Brotherhood is composed of clerical employees of other lines of railway, and the complainants do not allege themselves to be employees of the respondent Railroad Company so as to constitute said complainants members of the
247 class, that is, employees of the defendant Railroad Company, so as to constitute them proper representatives for institution of a class proceeding.

6.

It appears that these plaintiffs have an adequate remedy at law in that Chapter 6 of Title 45 of the United States Code, known and cited as the Railway Labor Act, provides for the method of procedure in cases such

as the ones set forth in the Plaintiffs' Complaint, which title and chapter provide for no such extraordinary relief as is here sought by these plaintiffs, and which title and chapter is, and was intended to be, the exclusive method of procedure in cases of the nature set forth in the Plaintiffs' Complaint.

7.

The Complainants' Bill of Complaint and the exhibits attached thereto and made a part thereof are insufficient as a matter of law to invoke the equitable powers and jurisdictions of this Court, or to authorize this Court to grant the equitable relief prayed for and to issue its temporary injunction and restraining order as has been done in this case, it appearing therefrom that no property rights of the complainants are involved and no irreparable damage would be sustained by said complainants if said injunction were to be denied or dissolved. That as reflected by the complainants' Bill of Complaint, the controversy was one between two rival claimants for recognition by the Railroad Company to represent employees of the class described in said Bill of Complaint, and that such recognition could confer no benefits or property rights on the complainants, it appearing from the terms of the Railway Labor Act itself that each successive step to the adjustment board, to the mediation board and on to arbitration, depended upon the voluntary acts of the parties, and that no power, authority or right is conferred by said Act upon the representative of any class of employees to
248 compel the employer, the Railroad Company, to grant any demand or to make any kind of agreement, and as the recognition of any one group of

persons over another group of persons could clothe them with no power or authority nor create any rights in them to compel the employer, Railroad Company, to any particular course of action, the designation or recognition of any such group, or the failure of the employer, Railroad Company, to recognize or designate any particular group as representative of the class, could not in law affect any property right or inflict irreparable damage or injury upon the complainants.

8.

The defendant, Railroad Company, and its executive officers have the inherent and constitutional right to converse and communicate with the employees of such Railroad Company and to express to such employees the wish of the employer, and to direct such employees as to the desires and purposes of such employer in the conduct of the employer's business in the line of such employees' relation to the employer. That any Act of Congress or order of Court which prevents or tends to prevent the free exercise on the part of the employer of such rights, contravenes the inherent rights of the employer and the rights of such employer granted to it under the terms of the Constitution of the United States. If the Act of Congress under which the Court is requested to act attempts or purports to confer any such power on the Court as complainants are asserting, then it is an unconstitutional interference with the right of free speech, or free communication between employer and employee and deprivation of property and property rights without due process of law.

9.

The defendant Railroad Company and its executive officers have the right to seek to influence their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such em-
249 ployer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

10.

The defendant Railroad Company and its executive officers have the right to interfere with their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods, and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

11.

The defendant, Railroad Company, and its executive officers have the right to coerce their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and

brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

12.

It appears that the Bill of Complaint has been prepared in violation of Rule 25 and is not a short, simple statement of the ultimate facts upon which the plaintiff asks relief, but is a pleading of evidence and consists of prolix and redundant allegations in violation of said rule.

13.

These respondents further move the Court to strike out the following parts of the Bill of Complaint herein, for the reasons hereinafter set out:

250 (1) Those portions of the Bill of Complaint in which it is alleged that the bill is brought for and on behalf of all of the Railway Clerks, Freight Handlers and Station Employees working in Texas and Louisiana for the defendant Railroad Company, save and except such Railway Clerks as are employed by said defendant Railroad Company at and in its general office building on Franklin and Travis Streets in the City of Houston, Texas, and at and in its similar general office building in the City of New Orleans, Louisiana, in that it appears from the admissions of the plaintiffs' own Bill of Complaint that an appreciable number of the clerks and employees above set out do not desire to be represented by the plaintiffs named in this suit, have not authorized this suit to be brought in their names or on their behalf, but as shown by such allegations are antagonistic to complainants and are, therefore, not proper parties plaintiff in this suit.

(2) All of Section or Subdivision IV of said Bill of Complaint, because the matters therein set out are impertinent to the cause of action attempted to be alleged in this suit, and are irrelevant to this vontroversy, the contract obligations attempted to be alleged therein having been abrogated by the respondent as is shown by other allegations contained in the Bill of Complaint, and no contractual rights are shown to be in existence between the parties hereto of which this Court can or should take cognizance. That all of the allegations in said paragraph are efforts to plead the evidence and do not constitute a succinct statement of the ultimate facts of a cause of action.

(3) All of Section V of the Bill of Complaint, because the matters therein set out are impertinent to the cause of action attempted to be alleged in this suit, and state no cause of action in equity against these respondents; all of the allegations contained in said paragraph are irrelevant and immaterial to this controversy, constitute a pleading of evidence and not a succinct statement of the ultimate facts constituting the
251 cause of action. That the history of transactions as therein related and the correspondence therein copied are needless burdens upon the record in this case.

(4) All of Section VI of said Bill of Complaint, because the matters therein set out are impertinent and state no cause of action in equity against these respondents. That said allegations in said paragraph state conclusions of law and not allegations of fact elucidating any succinct and proper statement of ultimate facts of a cause of action.

(5) All of Section VII of said Bill of Complaint because the matters therein set out are impertinent, irrelevant and immaterial, and state no cause of action in equity against these respondents. That the allegations therein contained do not disclose a property interest or property right which this Court can by its orders protect, nor does it disclose a situation and course of conduct which will avoid the effect of Section 52, Title 29, of the United States Code denying the right to issue injunctions in labor disputes, except where property rights may be damaged irreparably.

(6) All of Section VIII of the Bill of Complaint because the matters therein set out are impertinent, irrelevant and immaterial, state no cause of action against these respondents, and under the law the respondent has a right to negotiate, influence and deal with its employees individually or as a group, and the facts alleged in this paragraph do not contravene any rights of the complainant nor give rise to any liability on the part of the respondents, but were within the rights of the respondents under the provisions of the Railway Labor Act.

(7) Each and every part of said Bill of Complaint, save and except those parts thereof in which the complainants allege, or attempt to allege, that the said respondents have, or/and unless enjoined, will interfere with, influence, intimidate or coerce their clerical employees, other than general office employees,
252 with respect to their right of self-organization or designation of their representatives for the purpose set forth in the bill, together with all parts of said bill praying for any other or different relief than

that next above set forth, because such parts of said Bill of Complaint are impertinent and state no cause of action in equity against these respondents.

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Attorneys for Respondents.

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253 FIRST AMENDED ORIGINAL ANSWER OF RESPONDENT TEXAS & NEW ORLEANS RAILROAD COMPANY.

Filed March 1st, 1928.

(Title Omitted.)

Comes now Texas & New Orleans Railroad Company, respondent in the above styled and numbered cause, subject to its motion to dismiss and to strike out the Bill of Complaint, and by leave of Court first had and obtained, files this, its First Amended Original Answer to the complaint of the plaintiffs filed herein, and shows to the Court:

I.

As to the allegations in paragraph 1 of the Bill of Complaint, it denies that the so-called Plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, is a voluntary associa-

tion, entitled to bring this suit, and further alleges and asserts that there is no such association. The respondent further asserts that there is a national voluntary association known as "Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees", which has its seat of direction in Cincinnati, Ohio, and which has members and local lodges, some of which members are clerical employees of the respondent Railroad.

Respondent specifically denies that the plaintiff Brotherhood represents a majority of the clerical employees of respondent Railroad Company, and further
254 denies that a majority of the clerical employees, other than general office employees, of respondent Railroad are members of the Brotherhood, or that the said Brotherhood has written authorizations from a majority of said employees, authorizing and empowering it, or its General Chairman, to represent them in the matters referred to in said Bill of Complaint.

Respondents deny that the plaintiff Brotherhood is authorized by Equity Rules Nos. 37 and 38, on behalf of and as representative of "all Railway Clerks in the employ of the Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees)", in that it affirmatively appears from the plaintiffs' petition that a large number of the employees of the respondent Railroad are not members of the plaintiff Brotherhood, have no desire for such membership, have not authorized the plaintiff Brotherhood to bring this suit in their names or on their behalf; and further specifically deny that all the employees whom the plaintiff Brotherhood purports to represent "form a general class of persons with a common and general interest in the subject matter of this suit", because it

appears from admissions in the Plaintiffs' Bill of Complaint that a large number of clerical employees, in whose names and on whose behalf the plaintiff Brotherhood purports to bring this suit, are adversely interested to the plaintiff Brotherhood in the subject matter of this action.

The respondent specifically denies that the plaintiff, H. W. Harper, properly represents "all Railway Clerks in the employ of the Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees)", or that he is authorized by Equity Rules Nos. 37 and 38 to bring this suit on behalf of and as representative of "all Railway Clerks in the
255 employ of the Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees)", for the same reasons as next above set out with reference to the claim of the plaintiff Brotherhood to bring this suit for "all Railway Clerks in the employ of the Texas & New Orleans Railroad Company in Texas and Louisiana (except general office employees)". As to all the other allegations in this paragraph and as to the allegations concerning the methods and procedure of said Brotherhood in its organization and selection of representatives, defendant is without adequate information and therefore denies and demands strict proof.

II.

As to the allegations in paragraph II, contained, respondent Railroad admits that it is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business in the City of Houston, in said State, and

that it owns and operates and leases and operates various lines of railroad within and between the States of Texas and Louisiana, and that it is a common carrier of freight and passengers for hire. It denies that Complainant Harper is its employee. It admits that the individual respondents named, except the respondents F. C. Ehlinger, J. C. McDaniel, and C. W. Derrington, are officers and agents of respondent Railroad Company. Said respondent Railroad Company specifically denies that said respondents Ehlinger, Derrington and McDaniel are officers or agents of the respondent Railroad Company, but, on the contrary, assert that they are mere clerical employees. It further denies that the said Ehlinger, McDaniel and Derrington exercise supervisory or directory power or authority over respondent Railroad's employees, but it admits that the other individual respondents do exercise such power and authority, but in their capacity as officers and agents of re-
256 spondent, and not in their individual capacity. It denies that the individuals named as respondents are acting for and on behalf of, and with, other unnamed defendants so that the said individuals named as respondents, together with the unnamed respondents form a class of persons with a common and general interest in the subject matter of this suit.

III.

The respondent denies that this is a suit which arises under the Constitution and laws of the United States, particularly under the Act of Congress of May 20, 1926, known as the Railway Labor Act, 44 Statutes at Large 577, and the laws of the United States relating to Interstate Commerce, as alleged in paragraph III of the

Bill of Complaint, and further deny that it was instituted pursuant to the provisions of said Railway Labor Act and the laws of the United States relating to Interstate Commerce, but assert, on the contrary, that this suit is not authorized by the above mentioned Railway Labor Act for the invocation of the jurisdiction of the Federal Courts.

Respondent asserts that the Railway Labor Act above referred to contains within itself a complete method and procedure for the settlement of labor disputes between employers and employees in the positions of respondent Railroad, and its clerical employees, which authorized the invocation of aid from the Federal Courts only after an arbitral award made in compliance with the provisions of the said Railway Labor Act, and it is further asserted that the methods of procedure therein contained are, and were intended by Congress to be, the exclusive method of procedure in cases of the nature alleged by plaintiff Brotherhood.

Respondent further avers that the said Railway Labor Act creates no right in the plaintiff Brotherhood in that the acceptance of the said Act and the mode of procedure provided for by it is not required of
257 either party to disputes of the nature mentioned in the Act, but expressly provides that its provisions are applicable only by and with the consent of both parties to a dispute of the type mentioned in the Act.

Respondent further avers that there is nothing in the laws of the United States relating to Interstate Commerce which authorize the bringing of a suit of the nature alleged in the plaintiffs' Bill of Complaint.

Respondent asserts that the sole and entire relief prayed for by plaintiffs' Bill of Complaint is prohibited by Section 52, Title 29, of the United States Code.

Respondent denies that the allegations contained in plaintiffs' Bill of Complaint state a cause of action under the general equity jurisdiction of this Honorable Court, in that said allegations do not state a case within the well-established rules of equity jurisdiction and equitable relief, because it does not appear from the said allegations that any irreparable damage is being done to the property or property rights of the plaintiffs, or that any such irreparable damage is threatened.

IV.

Concerning the allegations of paragraph IV, respondent Railroad Company admits that it has executed with the complainant Harper certain memoranda evidencing the fact that certain rules and working conditions have been from time to time, and were in effect between respondent Railroad Company and its clerical employees, other than general office employees, and that the said memoranda were signed on or about the dates alleged in the Bill of Complaint. It alleges, however, that it has executed no such agreement except as required and compelled to do by certain decisions of the United States Railroad Labor Board, and it expressly denies that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees rep-
258 resents, or has represented a majority of its clerical employees, of the class described in the Bill of Complaint.

It admits that the plaintiff, H. W. Harper, as Chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has requested and demanded certain increases in pay of respondent Railroad, and that the same have

been denied. It admits that on or about November 24, 1926, one J. W. Walsh, an employee of the United State Board of Mediation, undertook to conduct mediation proceedings between it and the said Brotherhood, and that it declined to recognize his authority on the ground that said Board of Mediation had not the power to delegate its authorities and functions, and alleges that its refusal has been accepted as just and proper. It admits that Honorable Pat Neff, a member of the Board of United States Mediation, has undertaken to mediate in the matter referred to, and that said mediation has not resulted in an agreement.

Respondent Railroad Company expressly denies that the other matters set out in plaintiffs' Bill of Complaint constitute a recognition by the respondent Railroad Company of the right of the plaintiff Brotherhood to represent its employees of the class above mentioned, and alleges that the said matter set out in the plaintiffs' Bill of Complaint evidence nothing more than that it recognized the representation without admitting the right of representation, as required to do by the aforementioned decisions of the United States Railroad Labor Board. It avers that there is not in existence any agreement between the respondent and the complainant as alleged by complainant. As to all other allegations in said paragraph, defendant denies and demands strict proof.

V.

It denies the allegations of paragraph V that the plaintiff Brotherhood or the plaintiff H. W. Harper, represents, or is authorized to represent, all
259 or a majority of its clerical employees of the class mentioned in the Bill of Complaint, and the respondent Railroad denies that it has ever volun-

tarily recognized such representation on the part of any of the plaintiffs, but avers that, on the contrary, it has, and does, deny such right of representation.

Respondent admits that there has been formed among its clerical employees an organization known as "Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana", but it denies that it inspired or instigated the formation of the said Association.

It denies that it has attempted to coerce any of its employees to join the said Association of Clerical Employees, but admits that it has encourraged the said Association, and that it recognizes it as representing a majority of its said clerical employees. It asserts that it has encouraged the Association only by lawful means, in the exercse of the rights specifically given to it by Section 153 of Title 45 of the United States Code.

It denies that its officers, agents or employees acting as such, have undertaken or attempted, directly or indirectly, to interfere with, influence or coerce the clerical employees in the matter of their self-organization or designation of representatives, but it admits that divers of its agents and employees have spoken favorably with respect to said Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. It denies that any threats have been made in the matter whatsover. It admits that J. G. Torian, Assistant to its Vice-President and General Manager, acting as such, wrote and transmitted the letters, or substantially the letters, set forth in paragraph V of the Bill of Complaint, and alleges that the representations therein contained are true, and that the letters were sent in the ordinary course of business by the said J. G.

260 Torian, and without any intent to coerce or interfere with the clerical employees in the manner alleged in the Bill of Complaint.

The respondent denies that it, or its officers, selected the defendants J. C. McDaniel, C. W. Derrington, F. C. Ehlinger or others, to manage or direct the affairs, or become officers, of the said Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, and alleges that they have been selected by their fellow employees in accordance with the rules, regulations and by-laws of said Organization. It denies that the said Association is a mere puppet, or in any sense a representative or tool of the respondent Railroad Company, but alleges that the said Association of Clerical Employees properly represents a majority of the clerical employees of the class mentioned in the Bill of Complaint. The respondent further alleges that the aforementioned Association of Clerical Employees is a local organization, uninfluenced and undirected by foreign elements, and is, therefore, in a better position to understand and to cope with the problems which may arise between the respondent Railroad Company and its clerical employees of the class mentioned in the Bill of Complaint, such problems being purely local in their nature, than is the plaintiff Brotherhood, which is dominated and controlled by influences foreign to the respondent Railroad Company and its clerical employees.

The respondent further avers that nothing in the aforementioned Railway Labor Act is directed toward compelling the respondent to deal only with organizations representing a majority of its employees, but specifically gives the said Railroad the right to make such agreements with its employees as they may mutually see fit, and it further avers that nothing in the said Railway Labor Act denies to the Railroad the privilege

so necessary to its proper functioning and service to the public, of determining whether it shall deal, in
261 its relations with its clerical employees, with a local organization working purely for the solution of local problems, or whether it shall deal with an organization dominated and controlled by foreign influences having no interest whatsoever in the success of the respondent Railroad Company in fulfilling its duty to the public, but, on the contrary, being interested solely in the power and prestige of a national organization.

It denies each and every allegation of paragraph V of the Bill of Complaint except as herein expressly admitted.

VI.

Respondent Railroad Company specifically denies that the acts complained of in the Bill of Complaint constitute violations of the provisions of the Railway Labor Act, 44 Statutes at Large 577, of Section 3 thereof.

However, if it be held that the acts of the respondent Railroad Company in encouraging or in recognizing the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, are in violation of Section 3 of the Railway Labor Act, then the repsondent Railroad Company avers that Section 3 of the said Railway Labor Act is void and of no effect because in violation of the rights guaranteed to the respondent Railroad by the Constitution of the United States.

It denies specifically that it has made any discrimination whatever between its clerical employees of the class mentioned because of their affiliation or non-affiliation with the plaintiff Brotherhood.

VII.

The respondent particularly denies the allegations of loss of property or property rights contained in paragraph VII of the Bill of Complaint and avers that no reason is given for the allegation of probable
262 loss of increase in wages. In this connection the defendant avers that the aforementioned Association of Clerical Employees has since the filing of plaintiff's Bill of Complaint, contracted with the respondent Railroad Company for the distribution of approximately one hundred thousand dollars ($100,000.) yearly as an increase in wages for its clerical employees of the class mentioned in the Bill of Complaint. Further, the right to bargain for an increase of wages is not lost to the plaintiff Brotherhood, and even if it were it is not a property right which is protected or vindicated by Courts of equity. Nothing in the Railway Labor Act creates any new right in these plaintiffs, since the said Railway Labor Act is applicable by its own terms only after agreement by both parties. A right defeasible at the will of the respondent Railroad Company is not such a property right as is protected by a Court of equity. It denies that its clerical employees will be forced to withdraw from the plaintiff Brotherhood, but alleges, on the contrary, that its employees are and shall continued to be free to join the said Brotherhood. Respondent denies allegations of loss of interest in real estate, insurance, etc., and avers the respondent Railroad Company leaves its clerical employees of the class mentioned free to retain or resign their membership with the plaintiff Brotherhood as they see fit. Furthermore, it appears from the allegations of the plaintiffs' Bill of Complaint that if it or its members suffer any property loss, it will be due to their own voluntary acts.

VIII.

It denies the allegations of paragraph VIII of the Bill of Complaint, and particularly denies that it has, or is, or intends to, influence, coerce or intimidate any of its employees in any matters whatsoever or in the matters allege [alleged] in the Bill of Complaint, except in so far as it is lawful for the respondent Railroad Company to do so.

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IX.

It denies the allegations of paragraph IX of the Bill of Complaint. It is without information sufficient to form a belief with respect to the allegations of Paragraph IX of the Bill of Complaint and demands proof of same, save and except that it alleges that the said Brotherhood of Railway Clerks has not the bona fide authorizations of a majority of its employees to represent them. It denies that it is making, or has made, any endeavor to influence, coerce or intimidate any of its employees.

This respondent avers that the whole scheme of settlement of labor controversies as set up by the Railway Labor Act centers around the thought of friendly adjustment and the avoidance of strife. That such act does not contemplate a resort to Court action save in the manner provided for therein after an agreed arbitration, resulting in awards which are to be filed in the Federal District Court and may be appealed from. That this result can be more readily obtained, and serious controversies avoided if a Railroad Company deals with its own employees as contemplated by the act, instead of with persons not in its employ, but who owe alle-

giance to and hold their positions under non-resident and non-employee Brotherhoods. This respondent pleads its fundamental right to deal directly with its employees, to contract with them concerning wages, hours and conditions of service, etc., and to reason with them, exert its influence with them, express to them its wishes and to direct such employees as to its desires and purposes in the conduct of its business and in the line of the employees' relation to the employer. That the establishing and maintenance of friendly and cordial relations between it and its employees has been and is respondents'
263 purpose, that it may never have an interruption in the service the respondent must render to the public. In this effort it has sought to observe the law and not to violate it and denies that its acts in any particular have been, or threaten to be, a violation of any right of the complainants or duty it owes to them.

Having answered fully respondent prays that the relief sought by complainants be denied and that it go hence with its costs and such other equitable relief to which it may be entitled.

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264 FIRST AMENDED ORIGINAL BILL OF COMPLAINT, AND ORDER THEREON.

Filed March 6th, 1928.

(Title Omitted.)

To the Honorable J. C. Hutcheson, Jr., Judge of said Court:

Come now H. W. Harper, a resident of Harris County, Texas, and a clerical employee of the Texas and New Orleans Railroad Company in the State of Texas, individually and on his own behalf, and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, a voluntary unincorporated association, with its principal office in the City of Houston, Harris County, Texas, and H. W. Harper, as general chairman of the System of Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, on behalf of and as the actual and legally designated and elected representatives of the railway clerks in
265 the employ of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana, except general office employees, all of whom are resident either in the State of Texas or in the State of Louisiana, and belong to the same general class of clerical employees as said Harper and to whom and to said Harper the question at issue in this suit are of common and of general interest, and on behalf of all such other persons as have an interest herein and may by proper proceedings become parties hereto, and leave

of Court having been first had and obtained, file this their first amended original bill of complaint against Texas and New Orleans Railroad Company, a Texas corporation, with its principal office and place of business in the City of Houston, Harris County, Texas, and its officers, agents and employees having and exercising executive, directory and/or supervisory powers over said railway clerks in the employ of said Texas and New Orleans Railroad Company in Texas and Louisiana, and thereupon complain and say:

I.

Plaintiff Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employee, Southern Pacific Lines in Texas and Louisiana, (hereinafter called the Brotherhood) is a voluntary unincorporated association of railway clerks, freight handlers, and station employees (except in general offices) who are employed by the Southern Pacific Lines in the States of Texas and Louisiana, that is, by the Texas and New Orleans Railroad Company, and said organization has its principal office and headquarters at 703 Stewart Building, Houston, Texas, its principal office and headquarters, however, having been at the time of the filing of the original bill of complaint herein at 211 Moore Building, San Antonio, Texas. In this connection plaintiffs say that the railway clerks herein referred to are those clerks who are employed by the defendant
266 railroad company on its various lines and at its various stations and offices throughout the States of Louisiana and Texas, and the clerks and employees herein mentioned and referred to means all of the railway clerks working in Texas and Louisiana

for said defendant railroad company save and except such railway clerks as are employed by said defendant railroad company at and in its general office building on Franklin and Travis Streets in the City of Houston, Texas, and at and in its similar office building in the City of New Orleans, Louisiana, and said excepted employees are referred to herein as "employees in general offices". Plaintiff Brotherhood was organized and formed as a voluntary unincorporated association on or about September 1, 1918, and was first officially recognized as the representative of said railway clerks of defendant railroad company in Louisiana and Texas by virtue of and by reason of Supplement No. 7 to General Order No. 27 of the Director General of Railroads, effective September 1, 1918. The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees has fourteen (14) local lodges located in various cities in the States of Texas and Louisiana. The membership of each of these local lodges consists of railway clerks employed by the Texas and New Orleans Railroad Company and other railroads in the city where the headquarters of such local chapter is located or at other nearby points in the States of Texas and Louisiana. The members of each of these local lodges who are in the employ of the Texas and New Orleans Railroad Company, and each group of ten (10) or more members of plaintiff Brotherhood employed by the Texas and New Orleans Railroad Company at points in the States of Texas and Louisiana where there is not located a local lodge, triennially elect, in accordance with the provisions of the constitution and by-laws of the plaintiff Brotherhood, a local chairman to represent and act for them. The said local
267 chairman located within each of the eleven (11) divisions into which the States of Texas and

Louisiana have been subdivided by the plaintiff Brotherhood triennially elect a division chairman. These eleven (11) division chairmen constitute the System Board of Adjustment, Southern Pacific Lines, of the Plaintiff Brotherhood in the States of Texas and Louisiana and triennially elect a general chairman of such System Board of Adjustment of plaintiff Brotherhood, and said general chairman is the representative designated and authorized by said plaintiff Brotherhood and its members to represent them in all matters relating to the affairs of the plaintiff Brotherhood and its members and to confer on their behalf and as their representative with the representatives of said Texas and New Orleans Railroad Company concerning questions of rates of pay, rules, working conditions and any and all other similar matters and to represent them in all proceedings before the United States Board of Mediation and in the Courts of this country, both Federal and State. By reason of the fact that continuously since the time of its formation and organization, to-wit: on or about September 1, 1918, the plaintiff Brotherhood and its various general chairmen have been specifically authorized and designated by a majority of the 1700, or thereabouts, railway clerks (except those employed in the General Offices) in the employ of the defendant railroad company in the States of Texas and Louisiana to represent them in all matters relating to questions of rates of pay, rules and working conditions and all other similar questions, and more particularly by reason of the fact that on September 21, 1923, and February 21, 1924, the United States Railroad Labor Board in its decisions Numbers 1971 and 2138, respectively, held that the Plaintiff Brotherhood and its representatives were the legally authorized representatives of said

railway clerks and ordered the Southern Pacific Lines in Texas and Louisiana to proceed with negotiations with the representatives of plaintiff Brother-
268 hood concerning changes in rules and working conditions which affected said railway clerks, and said Southern Pacific Lines in Texas and Louisiana agreed to and did in fact comply with said order of the United States Railroad Labor Board, and that since June 1st, 1927, more than a majority, to-wit: more than 1100 of said 1700, or thereabouts, railway clerks have signed written authorizations to plaintiff Brotherhood and its general chairman to represent them in all matters relating to questions of rates to pay, the plaintiff Brotherhood and its general chairman and other officers are the representatives authorized and designated to represent all of said 1700, or thereabouts, railway clerks in the employ of the defendant Texas and New Orleans Railroad Company (except employees in the general offices) in all matters relating to questions of rates of pay, rules, working conditions and any and all other similar questions and to confer on behalf of said 1700, or thereabouts, railway clerks, and as their representatives, with the representatives of said Texas and New Orleans Railroad Company concerning all of the aforesaid matters and to represent them in all proceedings before the United States Board of Mediation and in the Courts of this country, both Federal and State.

Plaintiff Brotherhood brings this suit as authorized by Equity Rules Numbers 37 and 38 on behalf of and as representative of all its members and of all railway clerks in the employ of the Texas and New Orleans Railroad Company in Texas and Louisiana (except general office employees), as well as on behalf of all others

who are or may be similarly situated (whether members of said Brotherhood or not), and on behalf of all other persons who are entitled to and who may elect to associate themselves with plaintiffs. The members of plaintiff Brotherhood, the other railway clerks in the employ of said defendant Texas and New Orleans Railroad Company in Texas and Louisiana (except General
269 Office employees) and the other and additional persons in whose behalf this suit is brought and who are not hereinabove specially called by their names, number approximately seventeen hundred (1700), but the exact number and identity are so subject to fluctuations and changes by death or otherwise that it would be practically impossible to make all of them parties by name, and it is impracticable to bring all of them before the Court by name. All the persons in whose behalf this suit is brought are engaged in the same general class of employment for the same employer and form a general class of persons with a common and general interest in the subject matter of this suit. The plaintiff Brotherhood and the plaintiff H. W. Harper fairly represent the rights and interests of those in whose behalf they bring and prosecute this suit. Said employees are herein sometimes called plaintiff employees.

Plaintiff H. W. Harper is a clerical employee (railway clerk) of the Texas and New Orleans Railroad Company in the State of Texas and is the general chairman of the System Board of Adjustment of plaintiff Brotherhood and is invested with all the powers and authority of said office of said general chairman as hereinabove referred to. He is a citizen and resident of Houston, Harris County, State of Texas, with his principal office as such general chairman at 703 Stewart Building, Houston, Texas, he, however, having been at the time of the

filing of the original petition herein a citizen and resident of San Antonio, Bexar County, State of Texas, with his principal office as such general chairman at 211 Moore Building, San Antonio, Texas. He brings this suit on his own behalf and as authorized by Equity Rules Nos. 37 and 38 on behalf of and as representative of all the members of plaintiff Brotherhood and all of the railways clerks in the employ of the Texas and New Orleans Railroad Company in Texas and Louisiana (except general office employees), as well as on behalf of all others as are or may be similarly situated,—whether
or not members of plaintiff Brotherhood, and
270 on behalf of all other persons who may elect
to associate themselves with plaintiffs. The members of plaintiff Brotherhood, the other railway clerks in the employ of said defendant Texas and New Orleans Railroad Company in Texas and Louisiana (except general office employees), and the other and additional persons on whose behalf this suit is brought and who are not hereinabove specifically called by their names, number approximately seventeen hundred (1700), but the exact number and their identity are so subject to fluctuation and change by death or otherwise that it would be practically impossible to make all of them parties by name, and it is impracticable to bring all of them before the Court by name. Said H. W. Harper, and all the persons on whose behalf, as well as his own behalf, he brings and prosecutes this suit are engaged in the same general class of employment for the same employer and form a general class of persons with a common and general interest in the subject matter of this suit.

II.

Defendant Texas and New Orleans Railroad Company (herein sometimes called the "Railroad Company") is a corporation, organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business in the City of Houston, Harris County, Texas, within the Southern District of Texas, Houston Division and within the jurisdiction of this Honorable Court, and engaged in the business of a common carrier by railroad and the owner and/or operator of all the Southern Pacific Lines in Texas and Louisiana and the employer of all persons on whose behalf this suit is brought and prosecuted. In this connection plaintiffs say that said defendant Texas and New Orleans Railroad Company has, since March, 1927, and now is, the common carrier and railroad company by and through which each and all of the other railroad companies formerly constituting what was and
271 is commonly known and called "Southern Pacific Lines" in Texas and Louisiana are now operated and controlled; that the exact terms and conditions of said arrangement are unknown to plaintiffs but are well known to defendants. The officers, agents and employees of the Texas and the New Orleans Railroad Company made defendants herein solely in their capacities as such officers, agents and employees are those officers, agents and employees of said Texas and New Orleans Railroad Company having and exercising executive, directory and/or supervisory powers over the affairs and business of said defendant railroad company, especially over said railway clerks in the employ of said Texas and New Orleans Railroad Company in the States of Texas and Louisiana. The names of each and

all of them are not set forth herein for the reason that their exact identities are unknown to plaintiffs and their exact number and exact identity are so subject to change and fluctuation that it is impracticable to bring them before the Court by name.

III.

This is a suit of a civil nature which arises under the Constitution and laws of the United States, particularly under Act of Congress of May 20, 1926, known as the Railway Labor Act, 44 Statutes at Large 577, and the laws of the United States relating to Interstate Commerce, and is instituted pursuant to the provisions of said Railway Labor Act and the laws of the United States relating to Interstate Commerce and also under the general equity jurisdiction of this Court, by reason whereof this Court has jurisdiction of this suit.

IV.

Immediately after its organization on or about September 1, 1918, plaintiff Brotherhood became active in the interests of the plaintiff employees as their representative to secure for them such higher rates of pay and better working rules and conditions, et cetera, as they were justly entitled to and since that date

272 has been continuously so active in representing said plaintiff employees in all such matters in all negotiations with defendant railroad company and in all proceedings before the United States Railroad Labor Board and the United States Board of Mediation. On July 1, 1922, the plaintiff Brotherhood, after extended negotiations with the defendant railroad company and proceedings before the United States Railroad Labor Board, in all of which the plaintiff Brotherhood

and its officers were the sole representatives of the plaintiff employees, entered into a binding written contract entitled "Rules Covering all Clerical and Station Employees Except General Office Forces, Southern Pacific Lines in Texas and Louisiana", which covered all the working rules and conditions under which the plaintiff employees were to continue in the employ of said defendant railroad company. Said contract was signed for the defendant railroad company by J. G. Torian, Assistant to Vice-Presidents and General Managers, G. S. Waid and R. C. Watkins, of the Texas and New Orleans Railroad Company, and an officer of said railroad company having and exercising executive, directory and supervisory powers over said railway clerks in the employ of said railroad company in the States of Texas and Louisiana, and for the plaintiff employees by the plaintiff Brotherhood, under the signatures of its general chairman, vice-general chairman and general secretary-treasurer, as their sole representative. Except for certain amendments as to overtime and calls, Sunday and holiday work, vacations and sick leaves, which were agreed to in the form of a written contract between defendant railroad company and the plaintiff Brotherhood as the sole representative of plaintiff employees on May 9, 1924, after further extended negotiations between the representatives of said defendant railroad company and the representatives of plaintiff Brotherhood and further proceedings before the United States Railroad Labor Board in which the representatives of the plaintiff Brotherhood were the sole representatives of plaintiff employees, the aforesaid Rules have

273 remained in full force and effect and binding upon the parties hereto, and can only be changed in accordance with Rule No. 68 of said Rules, which provides:

"The foregoing rules supersede all previous rules and practices and are effective from July 1, 1922, and shall continue in effect until changed as provided herein or under the provisions of the Transportation Act, 1920. Should either the employees or the Management desire to revise or modify these rules, thirty days' (30) written advance notice containing proposed changes shall be given and conference shall be held immediately upon the expiration of said notice, unless another date is mutually agreed upon."

On May 11, 1923, plaintiff Brotherhood, as sole representative of plaintiff employees, and in accordance with the provisions of the Transportation Act of 1920, filed a written request with defendant railroad company for an increase in rates of pay and asked for a conference concerning same. The request for an increase in rates of pay having been refused by defendant railroad company, plaintiff Brotherhood, as sole representative of plaintiff employees, submitted the matter to the United States Labor Board, which, in its decision No. 1986, awarded plaintiff employees an increase in rates of pay and fixed the wage scale under which the plaintiff employees are now employed by defendant railroad company. On November 13, 1923, defendant railroad company entered into a written agreement with the plaintiff Brotherhood, as sole representative of plaintiff employees, concerning the application of said increase in rates of pay, a copy of said agreement, being attached hereto, marked "Schedule A", and made a part hereof as if set forth herein in full.

On November 2, 1925, the plaintiff employees, having made known to plaintiff Brotherhood their feelings and belief that a further increase in rates of pay was im-

perative by reason of increased costs and standards of living, and that they were entitled to same by reason, among other grounds, of increased wages
274 granted to other classes of employees of defendant railroad company, increased wages in other industries employing similar classes of labor, and the training, skill, and degree of responsibility required in their particular class of employment, the plaintiff Brotherhood, acting through its general chairman, H. W. Harper, and on behalf of, at the request of and as representative of the railway clerks, in the employ of the Southern Pacific Lines in Texas and Louisiana (except general office employees), presented a petition to the defendant railroad company, requesting an increase in wages amounting to substantially ten (10) cents an hour for each of the classes of employees just referred to and in accordance with the provisions of the Transportation Act of 1920, then in effect, gave the said defendant railroad company thirty (30) days' notice of a desire to amicably negotiate an increase in the rates of pay of the aforesaid employees and requested said defendant railroad company to name a date upon which said carriers' representatives would meet with a committee of the plaintiff Brotherhood for the purpose of attempting satisfactory disposition of the question by agreement. On November 8, 1925, the Southern Pacific Lines in Texas and Louisiana, acting through said J. G. Torian as their representative, addressed and sent a letter to "H. W. Harper, General Chairman, B. of R. C." under the heading of "Request for increase in rates of pay for clerical and station service employees, represented by Brotherhood of Railway and Steamship Clerks", advising that as soon as said Torian had disposed of some pending matters, he would write again naming a date for a conference. On November 30, 1925,

said Torian addressed and sent a letter to "H. W. Harper, General Chairman, B. of R. C.", under the heading of "Request for increase in rates of pay for clerical and station service employees, represented by Brotherhood of Railway and Steamship Clerks", advising "that I can meet your committee at 9 A. M., Tuesday, December 8, for the purpose of considering the wage request and other matters submitted and now pending."

275 The said conference was postponed by mutual agreement until December 22, 1925, at which time said Torian, as representative of said defendant railroad company, met with said H. W. Harper and other officers of the plaintiff Brotherhood as representatives of the railway clerks in the employ of the defendant railroad company in Texas and Louisiana (except general office employees) and discussed the question of rates of pay referred to in the petition of November 2, 1925, above referred to. On January 8, 1926, said Torian addressed and sent a letter to said H. W. Harper, advising that the request of the railway clerks in the employ of the defendant railroad company in Texas and Louisiana for an increase in rates of pay was denied on the ground that "there have been no changes in conditions that would justify any increase." Neither in said letter nor at any time during the negotiations just referred to did said Torian or any other representative of the Southern Pacific Lines in Texas and Louisiana raise any question as to the right of the plaintiff Brotherhood and its officers to represent the railway clerks in the employ of the defendant railroad company in Texas and Louisiana (except general office employees), but, on the contrary, at all such times did in fact deal with said plaintiff Brotherhood and its officers (including plaintiff Harper) and did recognize them as such representatives.

On January 23, 1926, the plaintiff Brotherhood as representative of said railway clerks in the employ of the Southern Pacific Lines in Texas and Louisiana, submitted the question of rates of pay raised in the aforesaid petition of November 2, 1925, to the United States Railroad Labor Board for its decision in accordance with the provisions of the Transportation Act of 1920. On February 6, 1926, the Southern Pacific Lines in Texas and Louisiana, acting by and through G. S. Waid, Vice-President and General Manager of the Southern Pacific Lines in Texas and R. C. Watkins, Vice-President and General Manager of the Southern Pacific Lines in Louisiana, both of whom having and exer-
276 cising executive, directory and supervisory powers over said railway clerks in the employ of the Southern Pacific Lines in the States of Texas and Louisiana, respectively, filed their answer with the United States Railroad Labor Board to the aforesaid submission of the plaintiff Brotherhood. This answer, copy of which is in the possession of the defendant railroad company, and with the contents of which defendants are familiar and well informed, is entitled "Request of Clerical and Station Employees (other than general office employees) for increase in the rates of pay that were established under Labor Board Decisions Nos. 1986 and 2776", and throughout it are numerous recognitions of the right of the plaintiff Brotherhood and its officers to represent the said railway clerks (other than general office employees) in the employ of the Southern Pacific Lines in Texas and Louisiana, such as "The Committee representing the employees", "under date of November 2, 1925, the Committee representing the clerical and station service employees (except general office employees) filed request for increase

in rates of pay, which is herewith produced", "the request of the employees" and "Representatives of the employees", referring to and meaning in each instance the plaintiff employees, and said Southern Pacific Lines in Texas and Louisiana did in fact recognize and deal with the plaintiff Brotherhood and its officers as the legal representatives of the said railway clerks (except general office employees) in the employ of the Southern Pacific Lines in Texas and Louisiana in connection with all proceedings before the United States Labor Board relating to the wage dispute above referred to and the said United States Labor Board did also so recognize the plaintiff Brotherhood and its officers.

Under date of May 12, 1926, the United States Labor Board having been advised of the passage by Congress of the Railway Labor Act, 44 Statutes at Large 577, abolishing the United States Railroad Labor Board, remanded by its decision No. 4197 all pending
277 disputes, including the aforesaid wage dispute between said defendant railroad company and its railway clerks (except general office employees) to the parties in interest "for the purpose of further discussion and settlement if possible."

In compliance with the above decision of the United States Railroad Labor Board, the plaintiff Brotherhood by and through its general chairman, said H. W. Harper, on July 6, 1926, wrote the said J. G. Torian, as representative of the defendant railway company in part as follows: "We desire to comply with the decision of the Board and resume negotiations in regard to the dispute U. S. R. R. L. B. Docket No. 5171-22 to the end that it may be possible to agree upon a basis for satisfactory settlement and it will be appreciated if you will name a date, which meets your convenience for conference with our committee for that purpose."

In compliance with the aforesaid request, said Torian set July 23, 1926, for the conference, and on that date as the representative of defendant railroad company he met with said H. W. Harper and other officers of plaintiff Brotherhood as representatives of the railway clerks of the defendant railroad company in Texas and Louisiana (except general office employees) and discussed the question of increases in rates of pay. At that time no question was raised as to the right of the plaintiff Brotherhood and said H. W. Harper to represent said class of employees, but, on the contrary, their right to do so was specifically recognized by said defendant railroad company.

On August 16, 1926, an appeal was taken by plaintiff Brotherhood acting by and through said H. W. Harper, its general chairman, as representative of the aforesaid class of employees, from an unfavorable decision of said Torian to said G. S. Waid, then Vice-President and General Manager, Southern Pacific Lines, Texas, and now Vice-President and General Manager of the Texas and New Orleans Railroad Company in Texas, and said R. C. Watkins, then Vice-President and Gen-
278 eral Manager, Southern Pacific Lines, Louisiana, and now Vice-President and General Manager of the Texas and New Orleans Railroad Company in Louisiana. On August 23, 1926, said Waid and Watkins in a joint letter addressed to "H. W. Harper, General Chairman, B. of R. C.", affirmed the aforesaid decision of said Torian in refusing said request for an increase in rates of pay and said in part, "your joint letter of August 16, relating to request filed by your committee for increase in rates of pay of clerical and station employees on these lines, who are represented by the Brotherhood of Railway and Steamship Clerks."

On October 15, 1926, plaintiff Brotherhood submitted the aforesaid controversy concerning the request for an increase in rates of pay of November 2, 1925, of the railway clerks of the defendant railroad company in Texas and Louisiana (except general office employees) to the United States Board of Mediation in accordance with the provisions of the Railway Labor Act, 44 Stat. 577, with the request to said U. S. Board of Mediation "to use your good offices with as little delay as possible, to the end that satisfactory settlement may be accomplished through your mediation."

On November 24, 1926, J. W. Walsh, a mediator appointed by the U. S. Board of Mediation, arrived in the City of Houston, Texas, to consider the aforesaid controversy. The defendant railroad company objected to Mr. Walsh acting only on the alleged grounds that he was not authorized under the Railway Labor Act to act for the U. S. Board of Mediation and nothing came immediately of this effort of the plaintiff Brotherhood to secure a settlement of said controversy as to rates of pay by mediation. No objection was raised at the aforesaid hearing before Mediator Walsh by said Southern Pacific Lines in Texas and Louisiana to the right of the plaintiff Brotherhood and of said H. W. Harper, its general chairman, and of its other representatives who appeared as the sole representatives of the aforesaid class of employees to act as such

279 representatives.

The plaintiff Brotherhood, however, persisted in its efforts to secure settlement of the aforesaid controversy by mediation and made numerous requests to the U. S. Board of Mediation to assign one of its members to consider this controversy. Finally on June 2, 1927, Honorable Pat Neff, Ex-Governor of Texas, who

had, in March, 1927, been appointed and was then, a member of the U. S. Board of Mediation, arrived in Houston and proceeded to consider this controversy along with four other railroad mediation cases and continued the consideration of same, holding various conferences with said H. W. Harper and other officers of plaintiff Brotherhood and with representatives of said defendants Texas and New Orleans Railroad Company until on June 15, 1927, he adjourned the further consideration of the same until he had finished with the annual meeting of the U. S. Board of Mediation which was scheduled to start June 27, 1927, at Washington, D. C., as appears from the letter of said Ex-Governor Neff to Richard P. Dee, Vice-President of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, under date of June 15, 1927, a true copy of which letter is attached hereto, marked Schedule "C" and made a part hereof the same as if set forth fully herein.

V.

Prior to the arrival of said Former Governor Neff in the City of Houston, Texas, on June 2, 1927, the Southern Pacific Lines in Texas and Louisiana, all of which were taken over by the defendant Texas and New Orleans Railroad Company on March 1, 1927, and have since that time been under its ownership and/or control, had not questioned the right and authority of the plaintiff Brotherhood or of plaintiff H. W. Harper, its general chairman, or of other officers and representatives of plaintiff Brotherhood to represent all of the railway clerks (except general office employees) in the

employ of said Southern Pacific Lines in Texas
280 and Louisiana, i. e., in the employ of the Texas and New Orleans Railroad Company, in the aforesaid controversy as to rates of pay nor in fact as to any other matter, but had since November 2, 1925, and prior thereto, expressly recognized the sole and exclusive right and authority of said plaintiff Brotherhood to represent said class of employees in said controversy as to rates of pay and in other similar matters.

As late as March 18, 1927, the defendant railroad company entered in a written agreement concerning seniority districts entitled "Memorandum of Agreement covering changes in Seniority District, Clerical and Station Employees—Houston, Victoria, and Terminal Divisions" with plaintiff employees, who were represented in the negotiations leading up to the signing of said agreement solely by plaintiff Brotherhood and said agreement is signed "For the Employees: H. W. Harper, General Chairman B. of R. C." The original of said agreement is in the possession of the defendant railroad company and the defendants are well informed concerning same.

However, on or about June 5, 1927, the exact date being unknown to plaintiffs but well known to defendants, the defendant, Texas and New Orleans Railroad Company, and its general officers, including among others A. D. McDonald, its President, H. M. Lull, its Executive Vice-President, G. S. Waid, its Vice-President and General Manager, Texas Lines, R. C. Watkins, its Vice-President and General Manager, Louisiana Lines, and J. G. Torian, its Assistant to Vice-Presidents and General Managers Waid and Watkins, unlawfully conspired together with other officers, agents and employees of said defendant railroad company having and exercising executive, directory and/or supervisory powers over said railway clerks in the employ of said de-

fendant railroad company in the States of Texas and Louisiana, and undertook, instigated and encouraged the formation of a so-called "Company" union of railway clerks in the employ of said defendant
281 railroad company in Texas and Louisiana (except general office employees) to be known as "The Association of Clerical Employees—Southern Pacific Lines" for the express purpose of interfering with, influencing and coercing the said plaintiff railway clerks concerning the formation and maintenance of labor organizations among themselves and the designation by said railway clerks of a representative to represent and act for them in the aforesaid controversy concerning rates of pay then pending before said U. S. Board of Mediation and in similar matters and to cause a sufficient number of said railway clerks to cancel their authorizations to plaintiff Brotherhood and its representatives to represent them in the aforesaid rates of pay controversy before said U. S. Board of Mediation and in similar matters so that the plaintiff Brotherhood and its representatives would not have the authorizations of a majority of said railway clerks to to represent them and thus necessitate the plaintiff Brotherhood withdrawing its submission of the rates of pay controversy from the consideration of said U. S. Board of Mediation.

On or about June 5, 1927, and on various dates since that time, at the direction and instigation of the said defendant Texas and New Orleans Railroad Company and its general officers, including those hereinabove mentioned, F. H. Bednark, J. H. Pryor, P. C. Gebhard, C. E. Armstrong, J. C. McDaniels, C. W. Derrington, F. C. Ehlinger, and certain other of defendant Texas and New Orleans Railroad Company's division super-

intendents, assistant division superintendents, trainmasters, yardmasters, special agents, and other officers, agents and representatives of said Texas and New Orleans Railroad Company, having and exercising executive, directory and/or supervisory powers and authority over said railway clerks hereinabove referred to, whose exact names and identities are unknown to plaintiffs, but well known to the defendants, presented to all or to the large majority of the aforesaid railway
282 clerks for signature by them a petition or petitions, reading as follows or substantially so:

"We, the undersigned clerical employees of Terminals Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as 'The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana", and do hereby petition the Management of these lines to permit us to take such steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the Management through this proposed organization. We desire Mr. J. C. McDaniels as our local representative."

and used the influence and authority of their positions in an endeavor to persuade, influence, intimidate and coerce all of the railway clerks who were subordinate to them and over whom they had the power of hiring, firing and promoting in the service and/or similar authority to sign the aforesaid petitions and renounce the plaintiff Brotherhood and its representatives as their authorized representatives in the aforesaid rates of pay controversy, then pending before the U. S. Board of Mediation and in similar matters.

Numerous of the said railway clerks were interviewed by said Bednark, Pryor, Armstrong, Derrington, McDaniels, Gebhart, Ehlinger and other officers, agents and representatives of the defendant railroad company hereinabove mentioned in the preceding paragraph hereof, and asked if they were members of plaintiff Brotherhood and told in substance that the defendant Texas and New Orleans Railroad Company would not grant an increase in rates of pay through negotiations with the plaintiff Brotherhood or its representatives, that plaintiff Brotherhood was not doing them any good, that the officers of plaintiff Brotherhood were only "feathering their own nests", but that if they and sufficient other railway clerks signed the petition to have "The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana" act as their representative in the rates of pay controversy then
283 pending before the U. S. Board of Mediation and in similar matters and renounced representation in such matters by the plaintiff Brotherhood, then defendant Texas and New Orleans Railroad Company would distribute Seventy-five Thousand Dollars ($75,000.00) per year among them, that is, among the 1700, or thereabouts, railway clerks in the employ of defendant Texas and New Orleans Railroad Company in the States of Texas and Louisiana, by way of annual increases in wages. Others of said railway clerks have been threatened with losses of vacations and similar privileges if they did not sign such petitions, and some of them who did not sign said petition have been deprived of pass privileges. The means and methods taken by the direction and instigation of the defendant Texas and New Orleans Railroad Company and its general officers, including those above named, to secure signa-

tures to the aforesaid petitions are set forth more fully in the affidavits of a large number of said railway clerks attached to the original petition heretofore filed herein and made a part hereof by reference as if fully set forth herein.

Said Torian as representative of said defendant Texas and New Orleans Railroad Company has caused for the purposes herein above referred to, letters bearing dates of June 17 and June 24, 1927, to be circulated among the said railway clerks and/or to be posted on the bulletin boards of said Texas and New Orleans Railroad Company at various points in the States of Texas and Louisiana, of which letters the following are correct copies or substantially so:

"Propaganda Being Circulated by General Committee of the Brotherhood of Railway Clerks:....., Houston, Texas, June 17, 1927.

Personal.
Mr. C. R. Merrill, Supt., El Paso,
Mr. A. D. Mims, Supt., San Antonio,
Mr. G. B. Goodloe, Supt., Victoria,
Mr. H. J. Micksch, Supt., Houston,
Mr. E. A. O'Donnell, Supt., Houston,
Mr. R. M. Glover, Supt., Lafayette,
Mr. P. B. Torian, Supt., New Orleans,
284 Mr. B. S. Holliman, Supt., Ennis,
Mr. J. H. Walsh, Supt., Austin,
Mr. R. R. Wood, Storekeeper, Houston,
Mr. J. T. Connor, Supt., T. & N. O. Shops, Houston,
Mr. J. S. Netherwood, Asst. Supt., M. P. & E., Algiers.

Gentlemen:

I enclose a copy of a printed circular that is being circulated by the Organization of the Brotherhood of Railway Clerks, apparently for the purpose of misleading our clerical and station service employees and creating a wrong impression in order to secure their signatures.

The misleading character of the numerous circulars recently sent out by this organization is aptly illustrated by the second paragraph of the circular enclosed herewith, the evident purpose of which paragraph is to convey the impression that mediation proceedings on the wage request filed by the organization of the Brotherhood of Railway Clerks has been going on since June 2nd. This is entirely untrue. We have been meeting with a member of the United States Board of Mediation since June 3rd, but have handled only cases involving employees other than the clerical employees. The case filed with the Board of Mediation by the Organization of the Brotherhood of Railway and Steamship Clerks has not been reached in conference and has not been gone into with the member of the U. S. Board of Mediation. On request of the Mediator handling the negotiations here, conferences were postponed yesterday in order that he could attend the annual meeting of the Board which is to be held in Washington on June 27.

The purpose of the misleading circular referred to above is quite evident and you are at liberty to show this letter to any of our clerical employees who are interested in the matter.

Yours truly,

(Signed) J. G. TORIAN,

Asst. to V. P. & G. M."

"Propaganda Being Circulated by General Committee of Brotherhood of Railway Clerks.

Houston, Texas, June 24, 1927.

Personal.
Mr. C. R. Merrill, Supt., El Paso, Texas,
Mr. A. D. Mims, Supt., San Antonio, Texas,
Mr. G. B. Goodloe, Supt., Victoria, Texas,
Mr. H. J. Micksch, Supt., Houston, Texas,
Mr. E. A. O'Donnell, Supt., Houston, Texas,
Mr. R. M. Glover, Supt., Lafayette, La.,
Mr. P. B. Torian, Supt., New Orleans, La.,
Mr. B. S. Holliman, Supt., Ennis, Texas,
Mr. J. H. Walsh, Supt., Austin, Texas,
Mr. L. B. Wood, Storekeeper, Houston, Texas,
283 Mr. J. T. Connor, T. & N. O. Shops, Houston, Texas,
Mr. J. S. Netherwood, Asst. Supt. M. P. & E, Algiers, La.

Gentlemen:

I enclose copy of a circular letter issued June 16, by General Chairman Harper of the Brotherhood of Railway Clerks and a copy of letter from Mediator Neff, which is referred to therein. The circulars and bulletins being sent out by this Committee are of such an undignified and abusive character that they are beneath our notice, but a number of the statements made are intentionally misleading and if not corrected would create a wrong impression. The evident purpose of the circular of June 18, that is enclosed herewith is to create in the minds of our clerical and station employees an impression that the demands of the Railway Clerks Organization have been taken up with us by Governor

Neff, representing the United States Board of Mediation and that mediations proceedings were begun and are under way. This is not true.

We met Governor Neff and were in conference for about twelve days, going into detailed discussion of two cases that involved other classes of employees and did not involve the clerks' organization. We did not complete the discussion of these two cases and the case of the Railway Clerks' Organization, which was the third on the list, was not reached and was not taken up in conference, except that we advised the mediator that when that case was reached in regular order we would take the position that the Organization of the Brotherhood of Railway Clerks did not have the authority of a majority of our employees to represent them.

Would advise further that I have had a communication from a member of the committee representing the clerical employees who desire to handle their affairs direct with the management and I will meet that Committee as soon as the organization of the Committee has been completed.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M."

The plaintiffs are informed and believe that the defendant Texas and New Orleans Railroad Company and its general officers, including those above named, have selected F. C. Ehlinger and cwrtain [certain] other chief clerks and employees of similar rank and position to manage and direct the affairs of and to become officers of the new so-called "company" union (The Association of Clerical Employees of the Southern Pacific Lines

in Texas and Louisiana), and have used their influence and powers of coercion and intimidation to
286 bring this about with the purpose and intent to be in a position to direct the policies and affairs of this so-called "company" union in the interests of the defendant Texas and New Orleans Railroad Company rather than in the interests of the railway clerks on whose behalf this suit has been brought and is being prosecuted and thus prevent said railway clerks from freely and without interference, influence, or coercion exercised by the defendant Texas and New Orleans Railroad Company contracting by means of collective bargaining through representatives of their own choice with said railroad company for their labors and services. Said Ehlinger and the other chief clerks and employees of similar rank and position referred to herein just above do not come within the class of railway clerks represented by plaintiff Brotherhood and on whose behalf the Brotherhood has brought the above referred to proceeding before the U. S. Board of Mediation for an increase in rates of pay and will not directly, at least, be affected by any increase of pay granted thereby and their interest are not in common with the railroad clerks on whose behalf this suit has been brought and is being prosecuted and in past disputes over wages and working conditions they have favored and actively supported the position taken by said defendant Texas and New Orleans Railroad Company rather than the position of said railway clerks and have always shown a disposition to follow out the instructions of said defendant railroad company in all such matters. Accordingly any union or other organization headed by said Ehlinger and the other chief clerks and employees of similar rank and position referred to here-

inabove in this paragraph does not and would not represent the interests of the railway clerks on whose behalf this suit has been brought and is being prosecuted, but rather the interests of and be a mere "puppet" of said defendant Texas and New Orleans Railroad Company.

On or about August 6, 1927, and since the filing of the original petition herein and just three days
287 subsequent to the entry of the temporary injunction herein, the said J. G. Torian, acting in his official capacity as assistant to Vice-President and General Manager G. S. Waid of said Company, addressed a communication for and on behalf of said defendant railroad company to said F. C. Ehlinger, which read as follows:

"Houston, Texas, August 6, 1927.

Representation Clerical Employees Other Than General Office Employees.

Mr. F. C. Ehlinger,
General Chairman,
Association of Clerical Employees,
Ennis, Texas.

The authorization which your committee hold to represent the clerical employees, other than General Office Employees on these Lines, that were presented to me at our conference yesterday as your authority for seeking conference with me have been carefully checked and in view of these authorizations and under Rule 56, Section (a) of the rules promulgated by the Railroad Labor Board, reading as follows:

'Where the term "duly accredited representative" appears in these rules it shall be understood to mean the regularly constituted committee representing the class

of employees on the railroad where the controversy arises, or any representative or representatives the employees directly interested may select or designate.'

these Lines will recognize your Committee as the representatives of the employers directly interested.

Yours truly,

(Signed) J. G. TORIAN,
Asst. to V. P. & G. M."

On or about August 9, 1927, and since the filing of the original petition herein, the said J. G. Torian, acting in his official capacity as Assistant to Vice-President and General Manager G. S. Waid of said company, addressed a communication for and on behalf of said defendant railroad company, transmitting to certain officials of said defendant railroad company a copy of his letter of August 6, 1927, addressed to the said Ehlinger, which said letter of August 9, 1927, is as follows:

"Representation Clerical Employes Other Than General Office Employees.

288 Houston, Texas, August 9, 1927.

Mr. C. R. Morrill, Supt., El Paso, Texas,
Mr. A. D. Mims, Supt., San Antonio, Texas,
Mr. G. B. Goodloe, Supt., Victoria, Texas,
Mr. H. J. Micksh, Supt., Houston, Texas,
Mr. E. A. O'Donnell, Supt., Houston, Texas,
Mr. R. M. Glover, Supt., Lafayette, La.,
Mr. P. B. Torian, Supt., New Orleans, La.,
Mr. B. S. Holliman, Supt., Ennis, Texas,

Mr. J. H. Walsh, Supt., Austin, Texas,
Mr. J. T. Connor, Supt., T&NO. Shops, Houston, Texas,
Mr. J. S. Netherwood, Asst. Supt., MP&E., Algiers, La.,
Mr. G. T. Davis, Supt., Creosote Works, Houston, Texas,
Mr. L. B. Wood, General Storekeeper, Houston, Texas,
Mr. Percy Hewett, Supt. Telegraph, Houston, Texas,
Mr. D. H. Lusk, Mgr. Dining Car Dept., Houston, Texas,
Mr. M. H. Bonner, Special Agent, Houston, Texas.

Gentlemen:

For your information and guidance I attach copy of my letter of August 6th addressed to General Chairman Ehlinger of the Association of Clerical Employees advising that these Lines will recognize his committee as the duly accredited representative of the clerical employees of these Lines other than the General Office Employees.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M."

"cc—Mr. G. S. Waid,
Mr. R. C. Warkins,
Mr. G. R. Cottingham,
Mr. C. K. Dunlap,
Mr. C. S. Fay,
Mr. L. B. McDonald,
Mr. T. H. Meeks,
Mr. O. C. Castle."

Shortly after the receipt of said letter last referred to by the several superintendents and other officials to whom the same was addressed, said superintendents and other officials caused said letter to be given wide pub-

lication among the 1700 clerical employees employed by the defendant railroad company in Texas and Louisiana. In this connection, it is represented to the Court that all, or practically all, of said superintendents and other defendant railroad company officials to whom said letter of August 9, 1927, was addressed, reproduced large numbers of copies of said letter and caused them to be placed upon various bulletin boards and in other public places at and around the stations and offices in which
289 said 1700 clerical employees were engaged in their duties, a copy of the bulletin issued by C. R. Morrill, Superintendent of said defendant railroad company at El Paso, being as follows:

"Southern Pacific Lines in Taxes and Louisiana, Texas and New Orleans Railroad Company.

Office of Superintendent.

El Paso, Texas, Oct. 1, 1927.

O1S.

All Concerned:

For your information and guidance attach copy of a letter addressed to General Chairman Ehlinger of the Association of Clerical Employees, by Mr. J. G. Torian, Asst. to Vice-President and General Manager, under date of August 6th, advising that these Lines will recognize his Committee as the duly accredited representatives of the Clerical Employees of these Lines, other than General Office Employees.

Please post for the information of all concerned.

(Signed) C. R. MORRILL,
Superintendent.

Cys. all Agents:
Messrs: W. R. Mann,
W. Black,
W. S. Ford,
D. B. Herbert,
J. E. Marshall,
S. B. M. Jones,
J. H. Knowles,
T. S. Stewart,
P. H. Lancaster,
J. C. Hunt,
E. D. Dumas,
Roundhouse Foreman, El Paso, Va. SO, DR, Eagle Pass,
Roadmasters, El Paso, Marfa, Del Rio, Spofford."

The writing of said letter of August 6, 1927, by the said J. G. Torian to the said Ehlinger and the dissemination of the information therein contained through the letter written by the said J. G. Torian on August 9, 1927, and its further dissemination and distribution among the various subordinates, employees, et cetera, was accomplished under the guise of an official action taken by the said J. G. Torian in connection with the performance of his duties in behalf of said defendant railroad company and under such circumstances that it could be made to appear that said letters, bulletin, et cetera, and the actions represented thereby,
290 were in due course of the railroad company's business as attended to by the said J. G. Torian in good faith; but none of said matters were in fact the good faith of bona fide actions of the said de-

fendant railroad company, acting through said J. G. Torian, and the writing of said letters and the distribution thereof and the dissemination of the information therein contained was done for the sole purpose of interfering with, influencing and coercing some or all of said 1700 clerical employees with respect to their self-organization, and for the further purpose of interfering with, influencing and coercing some or all of said 1700 clerical employees with respect to the designation of their representative or representatives to act for and in their behalf in connection with disputes between the defendant carrier and said clerical employees. In this connection, plaintiffs allege that a large majority of said 1700 clerical employees in truth and in fact desire the Brotherhood, and the officers thereof, to act for and on behalf of them (said 1700 clerical employees) with respect to all disputes between the defendant railroad company and its said 1700 clerical employees, and so desiring, a large majority of said 1700 clerical employees have designated and authorized said Brotherhood and its officers to so act for them and to represent them in all of such matters; that said defendant railroad company, its officers and agents, well knew that a large and unmistakable majority of its said 1700 clerical employees so desired to be represented by said Brotherhood and its officers and representatives, and well knew that said Brotherhood and its officers and representatives had continuously represented said clerical employees for more than nine years past, during all of which time said defendant railroad company had recognized and treated with the said Brotherhood as the duly accredited representative of said clerical employees in all matters and disputes with respect to wages, hours, working conditions, et cetera, in which

said clerical employees were interested, and that said defendant railroad company, its officers and
291 agents well knew that said Brotherhood, and its officers and representatives, were ready, willing and able to represent and act for said clerical employees, but in order to carry out and further their unlawful and improper purposes, as aforesaid, said defendant railroad company wholly ignored the written authorizations held by said Brotherhood, and its officers, from more than 1100 or said 1700 clerical employees, and said defendant wholly failed and refused to inspect or check said written authorizations, or in any reasonable manner to determine the validity, genuineness, et cetera, of same, but arbitrarily and in bad faith pretended to have examined and checked the authorizations purported to have been presented by the said F. C. Ehlinger, and the said F. C. Ehlinger and his associates were and are mere "figure heads" and were never the choice of any number of the clerical employees approximating one-half thereof, and were never designated by anything like a majority of said 1700 clerical employees, all of which was well known to the defendants, as aforesaid.

On or about August 20, 1927, and since the filing of the original petition herein, said J. G. Torian acting in his official capacity as assistant to the vice-president and general manager of said defendant railroad company, and for and on behalf of defendant railroad company, entered into a purported agreement concerning wages for said clerical employees with F. C. Ehlinger, A. G. Baker and Douglas D. Wade purporting to act for and on behalf of said clerical employees under the guise and subterfuge of "The Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana,"

an organization purporting to consist of the clerical employees of said defendant railroad company, but in truth and in fact an organization promoted, fostered and encouraged by the defendant railroad company, and its officers, which has never been and is not now a bona fide organization of said clerical em-
292 ployees organized, encouraged or carried on by any fair proportion of said 1700 clerical employees ordinarily eligible to membership in an organization truly expressive of their ideas, welfare and interest, but the same constitutes what is commonly referred to among labor unions and labor organizations as a "company union," commonly used from time to time among railroad companies or other large employers of skilled labor to discourage their employees from having membership in regularly constituted labor unions or labor organizations, and through which such railroad companies and other large employers of labor from time to time control to a greater or less extent the demands of their employees; and which said "company union" could not and would not have secured as many as 100 members from among said total of approximately 1700 clerical employees without the active interference, influence and coercion exercised by said defendant railroad company over the self organization of its said clerical employees, and said "company union" could never and would never have been designated as the representative of as many as 100 of said total of 1700 clerical employees without such interference, influence and coercion exercised by the defendant railroad company over its said clerical employees in the premises. Said agreement herein referred to reads as follows:

293 Memorandum of Agreement between Railroads and Association, omitted from the printed record, being heretofore copied at page 104.

* * * * * * * *

294 The above agreement was brought about by the defendants under the guise of an official action taken by the said J. G. Torian in connection with the performance of his duties in behalf of said defendant railroad company, and under such circumstances that it could be made to appear that the same was in due course of the railroad company's business as attended to in good faith by the said J. G. Torian; but said agreement, and no part thereof, was in fact the good faith or bona fide action of the said J. G. Torian and of said defendant railroad company, and said contract or agreement, and all matters relating thereto were done for the sole purpose of interfering with, influencing and coercing some or all of said 1700 clerical employees with respect to their self organization and for the further purpose of interfering with, influencing and coercing some or all of said 1700 clerical employees with respect to the designation of their representative or representatives to act for and in their behalf in connection with disputes between the defendant carrier and said clerical employees, and said action was taken despite the fact (which was well known to the defendant railroad company and its officers) that said Railroad Brotherhood as representative of said clerical employees had in November, 1923, entered into a wage agreement for the wage scale then existing with said railroad company, since which time said wage agreement has been in effect continuously, and during the last year and one-half of such time said clerical employees had been in dispute with the defendant railroad company over the matter of wages

and had been attempting to secure an increase in their pay comparing favorably with the wages paid by other common carriers in this territory for similar services, and not having been able to secure any increase in wages for said clerical employees said Brotherhood had, on or about August 15, 1926, duly submitted said wage con-
295 troversy to the United States Board of Mediation, from which time said wage controversy has been continuously pending before the said United States Board of Mediation, and despite the fact that said United States Board of Mediation had expressly refused to relinquish jurisdiction of said wage controversy.

Said action of said company in entering into said wage agreement of August 20, 1927, with said "company union" when the aforesaid wage controversy was still pending before the United States Board of Mediation was in violation of Section 6 of the Railway Labor Act which provides as follows:

"Sec. 6. Carriers and the representatives of the employees shall give at least thirty days' written notice of an intended change affecting rates of pay, rules or working conditions, and the time and place for conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice and said time shall be within the thirty days provided in the notice. Should changes be requested from more than one class or associated classes at approximately the same time, this date for the conference shall be understood to apply only to the first conference for each class; it being the intent that subsequent conference in respect to each request shall be held in the order of its receipt and shall follow

each other with reasonable promptness. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Board of Mediation have been requested by either party, or said board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 5 of this Act, by the Board of Mediation, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation."

Said wage agreement granting an increase of $100,000.00 in wages was entered into by said company with said "company union" for the sole purpose of influencing said clerical employees of said company to join said "company union" and to withdraw their memberships in and support of the Brotherhood.

Owing to the manner in which said wage increase was applied by agreement between said company and the representatives of said "company union," the clerical employees as a whole of said company have received little benefit thereby, a large part of said amount of $100,000.00 going in increases in as much as $10.00 a month to high-salaried employees such as chief clerks and other employees not of the class on whose behalf this suit has been brought and is being prosecuted, while
296 low-salaried clerks have received as little as a one cent a day increase.

On September 6, 1927, and since the filing of the original petition herein, a committee representing said clerical employees consisting of H. W. Harper—John W. Walker—C. A. Brandin, J. C. Moulin and E. L. Griffith, all of whom were and are clerical employees of said

railroad company, called upon H. M. Lull, executive vice-president of said defendant railroad company, and having and exercising executive, directory and supervisory powers over the railway clerks in the employ of said defendant railroad company in the States of Texas and Louisiana, at his offices in the Southern Pacific Building, Houston, Texas, and discussed with him in his official capacity the defendant railroad company's refusal to consider the authorizations which the Brotherhood then held and now holds to represent the majority of said 1700 clerical employees of said defendant railroad company in Texas and Louisiana and the recognition by said company of the "company union" as duly accredited representative of said clerical employees; said H. M. Lull stated in substance that the company had recognized the general committee of said "company union" as being the sole duly accredited representative of all the clerical employees in the company's employ in Texas and Louisiana, except general office employees and that neither he nor any other officers of the defendant company would give any consideration to the claims of said clerical employees that said Brotherhood should be recognized as the representative of said clerical employees; he further stated that the matter of representation was a closed one so far as the defendant railroad company was concerned and that the company and its officers declined to participate in any kind of an investigation to determine the relative merits or the correctness of the claims of the Brotherhood and the "company union" to be the duly accredited representative of said clerical employees. The said committee thereupon stated that they were then and there ready to produce for examination by the said H. M. Lull genuine written authorizations to said Brotherhood from approximately two-thirds of said clerical em-

ployees to represent them, but said H. M. Lull declined to examine said authorizations or to even consider any other evidence that the said committee might have to show, that the Brotherhood had the right to act as the duly accredited representative of said clerical employees,

297 but stated in substance that the company was satisfied with the claim of the "company union" that it represented the majority of said clerical employees. Said Harper thereupon asked said H. M. Lull if the defendant railroad company would consider any plan to determine which organization represented the majority of said clerical employees and said H. M. Lull replied that it would not as the company had already entered into an agreement with the "company union" and the matter was closed.

By said acts and conduct aforesaid the said H. M. Lull in substance and effect acquiesced in, ratified and approved all of the acts and conducts of the said J. G. Torian, as hereinabove set forth, and said H. M. Lull had either directed and authorized the said J. G. Torian with respect to said matters and things or, knowing the facts and circumstances, acquiesced in, ratified and approved the acts and conduct of the said J. G. Torian, and in respect to all of said matters and things he was acting with the said J. G. Torian and other officers and agents of said defendant railroad company and acting for and on behalf of said defendant railroad company.

On September 9, 1927, a committee consisting of said H. W. Harper and other representatives of said clerical employees, called upon said A. D. McDonald, president of said defendant railroad company at its offices in New York City, and advised him that the managing and executive officers of his said company in Texas and Louisiana had withdrawn without notice to the Brother-

hood, the recognition by said defendant company of said Brotherhood as the duly accredited representative of said clerical employees in Texas and Louisiana and had designated and recognized the said "company union" as the duly accredited representative of said clerical employees and had refused to examine although duly tendered the authorizations held by said Brotherhood of almost two-thirds of said clerical employees to represent them and had refused to discuss with the representatives of said employees any plan to determine whether said Brotherhood or said "company union" held the authorizations of a majority of said clerical employees.

298 Said A. D. McDonald advised said committee that whatever had been done by the said H. M. Lull and the other officers of said company met with his approval and would be sustained by him as representing the attitude of the defendant railroad company.

The acts, conduct, statements and attitude of the said A. D. McDonald were all in the scope of his authority as the president of said defendant railroad company, and were all done for and on behalf of said defendant railroad company and under all the facts and circumstances, bind the said defendant railroad company with respect to all of the matters and things done by its officers and agents as herein alleged.

The freight and yard offices at El Paso, Texas, are operated jointly by the Southern Pacific Company (Pacific System) and the Southern Pacific Lines in Texas and Louisiana, i. e. the Texas and New Orleans Railroad Company. On November 22, 1924, a joint agreement was signed by the Southern Pacific Company (Pacific System) represented by A. T. Hancock, Assistant General Manager of said Southern Pacific Company (Pacific System); Galveston, Harrisburg and San Antonio Rail-

way Company (now Texas and New Orleans Railroad Company) represented by the said J. G. Torian; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees Southern Pacific Lines (Pacific System) represented by R. W. Lang, General Chairman thereof; and by the Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, represented by said H. W. Harper, General Chairman thereof; whereby said railroad
299 lines established the El Paso Joint Terminal, and certain agreements were entered into therein relating to conditions of employment of and wage schedules of employees in said El Paso Joint Terminal.

Subsequently and since the filing of the original petition herein, due to the granting of an increase in rates of pay to clerical employees of the Southern Pacific Company (Pacific System) it became necessary to revise the rates of pay of the employees in the El Paso Joint Terminal covered by the aforesaid agreement, and the said J. G. Torian, A. T. Hancock, and R. W. Lang met in San Francisco in September, 1927, and arranged to have a conference at El Paso on September 28, 1927 between the managements of the two railroad corporations and committees representing the clerical employees of the said two companies. Nothing was said at this San Francisco conference as to what organization would represent the clerical employees of the said T. & N. O. Ry. Company and the said J. G. Torian did not advise the Brotherhood's representatives of said proposed meeting on September 28, 1927, at El Paso, but did so advise the representatives of the "company union," to-wit: the said Ehlinger, Baker and Wade, and arranged for them to attend said conference. Said conference at El Paso was

held in the office of the division superintendent of the defendant railroad company, and there were present at said conference the said A. T. Hancock, representing the Southern Pacific Company (Pacific System) the said J. G. Torian and W. R. Mann, Assistant Superintendent of the El Paso Division of the said T. & N. O. R. R. Company, representing the T. & N. O. R. R. Company, R. W. Lang, P. E. Whisner and H. A. Christman, General Chairman, Division Chairman and General Secretary respectively of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines (Pacific System) and the said Ehlinger, Baker and Wade, purporting to represent said "company union" and/or
300 said clerical employees. Said Harper had received advices of said conference and at the appointed hour for the conference presented himself at the door of the conference room, together with the said Lang, Whisner and Christman. Said Lang, Whisner and Christman were admitted to said conference room as representatives of the clerical employees of the Southern Pacific Company (Pacific System), but when said Harper started to enter the door of said conference room, his entrance thereto was barred by the said W. R. Mann, acting on and pursuant to the instructions of said J. G. Torian, given in his official capacity, placing himself in the doorway of such conference room in such manner as to bar passage to Harper and the said Mann stating that he would not permit said Harper to enter the conference room.

The clerical employees in the employ of the T. & N. O. R. R. Company in the El Paso Joint Terminal did not designate or authorize said "company union" committee to represent them in the aforesaid conference and the

said "company union" committee appeared at said conference to discuss the wages of said clerical employees in said El Paso Joint Terminal without having interviewed a single one of said clerical employees, and without having any knowledge whatever as to the wishes of said clerical employees with regard to revision of rates of pay. Said Harper had prior to said conference, attended a meeting of said clerical employees in said El Paso Joint Terminal who were members of the Brotherhood, more than a majority of said clerical employees in said El Paso Joint Terminal being members of the Brotherhood, and had received their instructions as to their desires concerning the proposed revision of wage schedules.

For a number of months the defendant railroad company has furnished an office or headquarters at Room 22 Grand Central Depot Building, Houston, Texas, upon the property of said railroad company, for the use and convenience of said "company union" and its officers and those interested therein; and said defend-
301 ant railroad company has encouraged and permitted the free use of said office and room and any and all conveniences appurtenant thereto, and has permitted and encouraged persons connected with and interested in said "company union" to use said office for the purpose of receiving mail and has further encouraged and permitted said office to be used by such persons to prepare and mail out certain letters containing propaganda for said "Company union."

On or about September 6, 1927, and since the filing of the original petition herein, C. A. Brandin, Division Chairman of said Brotherhood and E. L. Griffith, local chairman of said Brotherhood in the Houston Freight Warehouse attended a conference with H. M. Lull, execu-

tive Vice-President of said defendant railroad (hereinabove referred to) and as an incident thereto the said Brandin and Griffith were required to be absent from their duties as clerical employees of the defendant railroad company from 10 A. M. until 3 P. M. on said date, whereupon four hours' pay was deducted from the pay of each of said clerks, although the cause of their absence from their duties was well known to their superior officers and although permission to attend said conference had been obtained through regular channels; whereas when representatives of said "company union" have attended meetings and conferences similar in nature, no deduction whatever has been made from their pay for the time lost or absence from their duties.

Said Ehlinger, Baker, Wade and other representatives of said "Company Union" for a number of months have been permitted by said defendant railroad company to absent themselves from their regular duties for said railroad company and to devote all or part of their time to the organization and conduct of said "company union," all of said time receiving their customary salary or wages from said defendant railroad company and so organizing said "company union" and conducting its affairs under the aegis of the said defendant railroad company's authority.

On or about June 9, 1923, H. W. Harper was
302 granted indefinite leave of absence, effective June 15, 1923, to enable him to assume his duties as general chairman of said railroad Brotherhood, since which time the said Harper has been treated as in all respects an employee of the defendant railroad company, as is usual and customary with said defendant railroad company and other railroad companies in similar cases; and since which time the said Harper has

each year been issued an annual pass over all the lines of the defendant railroad company in the States of Texas and Louisiana, in order to enable him to attend meetings as general chairman of said Brotherhood, et cetera; on October 9, 1927, while on board one of the defendant railroad company's trains bound for Galveston, Texas, said Harper was advised by the conductor of said train that he had instructions to take up Pass No. A-25751, issued to the said Harper for the year 1927, and said conductor did not permit said Harper to ride on said pass from Houston to Galveston said conductor having been given such instructions by the defendant railroad company, its officers and agents. In like manner each year for the period of the past few years, said Harper has also been issued a pass by said defendant railroad company for himself and his mother, Mrs. Owen Harper, for transportation over the lines of said company in the El Paso Division, said pass being the usual type and kind of pass issued to employees having the requisite length of service which Harper had had. The defendant railroad company has issued an order to all its passenger conductors to take up this pass, being No. A-13805 issued to said Harper and his mother, on the grounds that said Harper is "out of the service." On or about September 24, 1927, the defendant railroad company entered a notation upon the personal record card of the said H. W. Harper on file in its office at Houston to the following effect: "Has performed no service for company since June 14, 1923, and is dropped from the roster" and said Harper has not been officially notified by the defendant railroad company that he has been discharged from its
303 employ, or his employment otherwise terminated, and has been granted no hearing ordinarily given to clerical employees; all of which acts and con-

duct on the part of the said defendant railroad company, its officers and agents, were without cause or provocation on the part of the said Harper and the said acts and conduct of said defendant railroad company, its officers and agents were prompted solely because of and by reason of the said Harper's connection with and membership in said Brotherhood.

On September 9, 1925, John W. Walker was granted an indefinite leave of absence by the defendant railroad company to assume his duties as general secretary-treasurer of said Brotherhood.

On October 6, 1927, said Walker sent to the treasurer of said Company check for $1.40 premium on certain group life insurance which he had theretofore paid for along with and in the same manner as other clerical employees; and on October 7, 1927, A. D. Mims, superintendent of the San Antonio division of said defendant railroad company returned said check to the said Walker with a letter in which he advised that Walker was no longer considered an employee of said defendant railroad company. No hearing has been granted to said Walker and no cause or reason assigned for terminating his employment; nor have the usual customs and practices been observed in his case which would have been ordinarily observed in the cases of employees discharged and removed from the service, or where employment was in any manner terminated; all of which acts and conduct on the part of the said defendant railroad company its officers and agents were without cause or provocation on the part of the said Walker and the said acts and conduct of said defendant railroad company. its officers and agents were prompted solely because of and by reason of the said Walker's connection with and membership in said Brotherhood.

The defendant railroad company, through its officers and agents have frowned upon, discouraged and attempted to keep the members of said Brotherhood from attending to any business or discussions with respect to encouraging or approving of said clerical employees joining and remaining members of said Brotherhood; but said defendant railroad company, its aforesaid
304 officers and agents, have in no way discouraged, but on the contrary, have in every way and by every means encouraged and let it be known that said company approved of and desired its clerical employees to join said "company union" and consented and approved of the officers of said "company union" organizing the same and conducting its a#airs under the ageis of the defendant railroad company's authority.

VI.

The matters referred to in the fifth paragraph of this bill of complaint constitute violations by the said Texas & New Orleans Railroad Company, its officers, agents and employees having and exercising executive, directory and superisory powers over the railway clerks in the employ of said Texas and New Orleans Railroad Company in the States of Texas and Louisiana, among other things of the rights given to plaintiffs and to said railway clerks on whose behalf this suit has been brought and is being prosecuted by the provisions of the Railway Labor Act 44, Stat. 577, particularly Section 2 thereof, which provides in part as follows:

First: "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates

of pay, rules and working conditions and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second: "All dispute between a carrier and its employees be considered and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer respectively, by the carriers and by the employees thereof interested in the dispute.

Third: "Representatives, for the purpose of this Act (Chapter) shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association or by other means of collective action, without interference, influence or coercion exercised by either party over the self-organization or designation of representatives by the other;

in that, while as above set forth, the plaintiff Brotherhood and its officers as representatives of the
305 aforesaid railway clerks have exerted every reasonable effort to settle the aforesaid dispute as to rates of pay in order to avoid any interruption to commerce, said defendants have not used any reasonable effort to do so, but on the contrary, have not permitted representatives of said railway clerks to be designated by said railway clerks "in such manner as may be provided in their * * * unincorporated association or by other means of collective action, without interference,

influence, or coercion exercised by" said defendants "over the self-organization or designation of representatives" by said railway clerks and have deprived said railway clerks of the right to be represented by representatives of their own choice, as more fully set forth hereinabove in the fifth paragraph of this petition and by reason of the foregong the aforesaid defendants should be enjoined from further violating the aforesaid rights of the plaintiffs and of said railway clerks on whose behalf this suit has been brought and is being prosecuted, the aforesaid rights being valuable property rights of said plaintiffs and said railway clerks. The foregoing also constitute actual violations of and a declared intention by the defendants to violate and/or breach section (b) Rule 56 of the agreement as to working rules and conditions of employment entered into in writing between plaintiff Brotherhood as representative of said railway clerks and the Southern Pacific Lines in Texas and Louisiana on July 1, 1922, and still in full force and effect, which provides as follows:

Sec. (b). No discrimination will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organizations."

and the said defendants should be enjoined from so violating said agreement and from influencing, coercing and intimidating said railway clerks by threats to so violate said agreement.

VII.

Plaintiffs and those on whose behalf this suit has been brought and is being prosecuted are without due and adequate remedy at law and are without any remedy

whatever other than by injunction in a Court of equity, and if the permanent injunction hereinafter prayed for is not granted they will suffer great and irreparable loss and injury by reason of the matters herein-
306 above set forth, and they will not be in a position to be able to proceed with the present or other mediation proceedings before the U. S. Board of Mediation, and said railway clerks on behalf of whom this suit has been brought and is being prosecuted will be deprived of important property rights by way of loss of increased wages and by way of being denied the right to contract for their labor and services with defendant Texas and New Orleans Railroad Company by means of collective bargaining through representatives of their own choice, which is a most valuable property right, since by reason thereof they may have been able to obtain higher wages, shorter working hours, better working conditions, etc., and said railway clerks will be deprived of the right to work and to continue to work under arrangements as to representation which will insure fair wages and working conditions, which right is an important property right, and many of said railway clerks who are members of the plaintiff Brotherhood, and on whose behalf this suit has been brought and is being prosecuted will be deprived of further important property rights in that if the defendants succeed in their purpose to supplant the plaintiff Brotherhood with a so-called "company union", the said railway clerks on whose behalf this suit is brought and prosecuted, will be forced to withdraw from membership in plaintiff Brotherhood, and the plaintiff Brotherhood will of necessity be dissolved, and said Harper and the others of said clerical employees who are members of the Brotherhood will lose their interest in certain valuable real estate

and other property owned by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of which the plaintiff Brotherhood forms a part, and will lose the insurance protection afforded them by the Death Benefit Fund of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the estates of each member in plaintiff Brotherhood or the beneficiaries named in the policies issued to each such member against said Fund being entitled on the death of such members to be paid out of said Fund, varying amounts of money up to $1500, depending upon the period of membership of the particular member dying, and by reason
307 thereof the defendants should be enjoined from further violating the rights of the plaintiffs and of said railway clerks as aforesaid and from endangering their property rights as aforesaid.

VIII.

As set forth fully in the fifth paragraph of this Bill of Complaint, the defendants herein have been and are influencing, coercing and intimidating many of the plaintiff employees in an endeavor to cause them to breach the agreements referred to in the first paragraph of this bill of complaint, which they have entered into with the plaintiff Brotherhood, whereby the said plaintiff employees have authorized the plaintiff Brotherhood to represent them in the present proceedings before the U. S. Board of Mediation and in any other proceedings relating to the present wage controversy referred to hereinabove, by designating the new so-called "Company union," to represent them in said proceedings in the place and stead of the plaintiff Brotherhood, and said

defendants have been and are further influencing, coercing and intimidating the plaintiff employees who are members of the plaintiff Brotherhood in an endeavor to cause them to breach and violate their contracts of membership with the plaintiff Brotherhood and the rules, by-laws and constitution of the plaintiff Brotherhood referred to in the first paragraph of this bill of complaint by designating the new so-called "company union" to represent them in the aforesaid proceedings and in all other matters concerning present and future relations and dealings between defendant railroad company and plaintiff employees in the place and stead of the plaintiff Brotherhood and the said defendants should be enjoined and restrained from further so influencing, coercing and intimidating plaintiff employees in an endeavor to cause them to breach their agreements and contracts as aforesaid.

Practically all, if not all of the 1700 clerical employees of defendant railroad company herein referred to really and sincerely desire plaintiff Brotherhood and its officers and representatives to act for and represent them in this and other matters concerning wages and
308 working conditions, and but for such undue and improper influence, coercion, interference and intimidation defendants, each and all of said employees would so openly express themselves.

Wherefore, plaintiffs pray:

First: That the temporary injunction heretofore granted and issued herein by this Honorable Court, be continued in force and that upon a hearing herein the same be made permanent and perpetual and that the

defendant Texas and New Orleans Railroad Company, its officers, agents and employees having and exercising executive, directory and/or supervisory powers over the railway clerks in the employ of said Texas and New Orleans Railroad Company in the State of Texas and Louisiana be permanently and perpetually enjoined and restrained from in any way or manner interfering with, influencing, intimidating or coercing plaintiff Harper or any of the approximately 1700 clerical employees (and being the clerical employees described and referred to in this petition which includes approximately 1700 railway clerks in the employ of the defendant railroad company on its lines throughout the States of Texas and Louisiana, except such clerical employees as are employed and engaged in its general office in the city of Houston, Texas, and in its general office in the city of New Orleans, Louisiana), with respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant railroad company; and further enjoining and restraining said defendant Railroad Company and its aforesaid officers, agents and employees from in any way or manner interfering with, influencing, intimidating or coercing plaintiff Harper or any of said clerical employees herein referred to of their free and untrammeled right of self organization; and further enjoining and restraining said defendant Railroad Company and its aforesaid officers, agents and employees from recognizing and treating the Association of Clerical Employees as it is now constituted as the recognized representative of the clerical employees of the Texas and New Orleans Railroad Company in the

States of Texas and Louisiana; and further enjoining and restraining said defendant Railroad Company and its aforesaid officers, agents and employees from permitting officers and representatives of said Association to organize, promote, manage and attend to the business of said Association, or any organization of said clerical employees hereafter formed, on the said Texas and New Orleans Railroad Company's time and pay, and at its expense and under the aegis of the authority of said Texas and New Orleans Railroad Company, unless a similar privilege is accorded to the officers and representatives of complainant Brotherhood; and further enjoining and restraining said defendant railroad company and its officers from withdrawing recognition from said Brotherhood as the representative of said clerical employees in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this Court and without the dictation or interference of said Texas and New Orleans Railroad Company and its aforesaid officers, agents and employees, shall choose another representative or representatives, and further enjoining and restraining said defendant railroad company and its officers from discharging officers of said Brotherhood from the service of said defendant railroad company so long as said Brotherhood is justly entitled to recognition as the representative of said clerical employees and the conduct of such officers of said Brotherhood does not become such as to warrant their discharge for good and sufficient cause; and further enjoining and restraining said defendant railroad

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company and its officers from canceling, so long as said Brotherhood is justly entitled to recognition as the representative of said clerical employees, the pass privileges enjoyed by officers of said Brotherhood over the lines of said Texas and New Orleans Railroad Company, which they enjoyed prior to August 6, 1927; and further enjoining and restraining said defendant railroad and its officers from discharging members of the said Brotherhood from its employ because of their membership in and activities on behalf of said Brotherhood.

310 Second: For such other and further relief as may appear to this Court to be proper in the premises.

Third: That the defendants be required to answer this first amended original Bill of Complaint under oath, and that the plaintiffs be granted such hearing or hearings as shall be mete and proper to enable the Court to grant the relief prayed for herein, and that the defendants be commanded to abide by and perform such orders or decrees as the Court may deem proper and as may be required by equity and good conscience.

As the defendants are already before this Court, having appeared generally and answered, there is no necessity for the issuance and service of a writ of subpoena and accordingly the same is not prayed for.

FULBRIGHT, CROOKER & FREEMAN,
CARL G. STEARNS,
Attorneys for Plaintiffs.

311 The State of Texas,
County of Harris.

H. W. Harper, first being duly sworn, deposes and says that he is one of the plaintiffs in the above entitled cause and the General Chairman of the System Board of Adjustment Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, one of the plaintiffs in the above entitled cause and that he has read the above and foregoing first amended original bill of complaint, and knows the contents thereof, and that the allegations therein contained are true.

H. W. HARPER.

Subscribed and sworn to before me, on this the 6th day of March, A. D. 1928.

CARL G. STEARNS,
(Seal) Notary Public, Harris County, Texas.

Ordered: Leave is hereby granted to file the above first amended original bill of complaint.

J. C. HUTCHESON, JR.,
U. S. D. J.

Dated March 6, 1928.

312 SCHEDULE "A".

Morgan's Louisiana & Texas Railroad & Steamship,
Louisiana Western Railroad Company,
Iberia & Vermillion Railroad Company,
The Galveston, Harrisburg & San Antonio Railway Company,
Texas & New Orleans Railroad Company,
Houston & Texas Central Railroad Company,
The Houston, East & West Railway Company of Texas,
Houston & Shreveport Railroad Company,
Southern Pacific Terminal Company,
Direct Navigation Company.

Houston, Texas, November 13, 1923.

Application of Decision No. 1986
United States Railroad Labor Board:

Increase in Pay of Clerical Employees.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

At our conference today, we discussed the questions of application of the wage award of Decision No. 1986 of the United States Railroad Labor Board to the Clerical and Station forces on these lines who come under the decision and are covered by Sections 1, 2, 3, 4, 5, Article 1 of the award, just as it reads, giving to each employee in each class the hourly increase that is specified in the above mentioned sections 1, 2, 3, 4, 5 of Article 1 and without varying from the hourly increases awarded.

If my understanding is correct and this flat application of the award meets with your approval, kindly let me have your acknowledgment.

Yours truly,

(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

Accepted:

(Signed) H. W. HARPER,
General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Service Employees.

313 SCHEDULE "C".

United States Board of Mediation,
Washington.

Samuel E. Winslow, Chairman,
G. Wallace W. Hanger,
Edwin P. Morrow,
Pat M. Neff,
John Williams,
John Harriman, Secretary.

Houston, Texas, June 15, 1927.

Mr. Richard P. Dee,
Vice Grand President,
Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees,
Houston, Texas.

Dear Sir:

As you know I have been in Houston since June 2nd, handling jointly five railroad mediation cases as provided by the laws creating the United States Mediation

Board. Two of these cases have been with the Missouri Pacific Lines and three with the Southern Pacific System. Up to this time I have not been successful in terminating any of these cases.

This is to advise you that the case in which you are interested together with the other four cases will all be held in abeyance within the jurisdiction of the Mediation Board, until after the annual meeting of the Mediation Board which commences in the city of Washington, Monday, June 27th. Shortly after the adjournment of the annual Board Meeting, I shall return to Houston to resume my mediation work in connection with your case, with the hope that within a short time a satisfactory and amicable adjustment can be had.

Will advise you several days in advance of the renewal of the mediation of your case.

I am with every good wish to you and yours during the "recess hour."

Yours cordially,

(Signed) PAT M. NEFF,
Member U. S. Board of
Mediation.

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314 SUPPLEMENTAL MOTION OF DEFTS. TO STRIKE OUT AND DISMISS THE FIRST AMENDED ORIG. BILL OF COMPLAINT.

Filed March 12, 1928.

(Title Omitted.)

Comes now the Texas & New Orleans Railroad Company and the other respondents in the above cause, and with leave of the Court, file this Supplemental Motion to Dismiss and Strike Out the First Amended Original

Bill of Complaint filed herein on March 6th, 1928, and move the Court to dismiss said Amended Bill upon the following grounds, to-wit:

1.

Respondents renew each and all of the grounds for dismissal contained in their First Amended Motion to Dismiss and Strike Out the original bill of complaint, heretofore filed, in so far as these grounds are applicable to the amended bill of complaint, and move that said amended bill be dismissed.

2.

They move to dismiss and strike out all of those portions of the amended bill beginning with paragraph 1 page 1 and extending through paragraph 5 page 22, because these allegations are long and involved and have been prepared in violation of Rule 25 and are not a short, simple statement of the ultimate facts upon which the plaintiff asks relief, but are a pleading of evi-
315 dence, including the history of the complainant Brotherhood and many other irrelevant matters.

3.

They move to strike the allegations on the 22nd and 23rd pages of said bill in which it is charged that Ehlinger and other chief clerks of similar rank and position, do not come within the class represented by the plaintiff Brotherhood, because these are not pertinent matters and the Court has no power to determine the classificiation of clerks that may or may not belong to or

be included in the Brotherhood, or to designate which employees are and which are not representative of a particular craft.

4.

They move to strike all of the allegations on the 23rd and subsequent pages in which it is averred that the defendants recognized the association, and dealt with it because, under the Railway Labor Act, the Company has the right to recognize and deal with any group of its employees and since it has this legal right its motives for so doing cannot be inquired into, nor can it be complained that it has done so, nor can it be charged that its purpose in so doing was to influence or coerce other employees.

5.

They move to strike all of the averments referred to in the foregoing paragraphs of this motion for the further reason that the Court has no jurisdiction to pass upon the question of recognition or to require the defendant company to recognize any particular representative or representatives, or to enjoin or restrain the company from recognizing any particular representative or representatives, the matter of recognition and dealing with the employees being entirely outside of the
316 scope of the statute except in so far as this recognition or dealing may be purely voluntary on the part of the company and its employees

6.

They move to strike all those allegations on the 28th page in which it is averred that the Association is not properly representative, because this is a matter over which the Court has no jurisdiction and is without power to determine whether one group of employees or another is or is not representative.

7.

They move to strike all of the averments on the 29th and subsequent pages which set out the contract and agreement made between the Association of Clerical Employees and the Texas & New Orleans Railroad Company on the 20th of August, 1927, and which seek to attack this agreement or modify it in any way, and which invoke the jurisdiction of the Court with reference thereto, because these are matters entirely foreign to the plaintiff's cause of action as originally brought, and because the Court in no event has jurisdiction to inquire into these agreements to enforce them or to modify them. If the Court has any jurisdiction at all in these matters, under the Railway Labor Act, which is not admitted but denied, its jurisdiction is limited to preventing interference and coercion with the selection of representatives, and since the same statute under which the plaintiff's bill is brought gives the defendant the right to deal with any group of its employees that it may choose to deal with, its contracts and agreements cannot be inquired into or modified by the Court.

8.

They move to strike the averments on the 33rd page
in which it is complained that the defendant
317 refused to recognize the Brotherhood as the sole
representative of the Clerical Employees, because the Court has nothing to do with recognition or non-recognition, nor has it jurisdiction to compel the recognition of one group of employees as against another.

9.

They move to strike the averments on the 33rd page in which it is stated that the recognition of the Association was wrongful, because the Court has no power or jurisdiction either to compel the recognition of one group as representative or to prevent the recognition of another as representative.

10.

They move to strike the averments on the 35th and subsequent pages in which it is charged that certain negotiations were conducted between the defendants and the Association and that representatives of the Brotherhood were denied admission to these conferences and negotiations, because the Court is without power to designate who shall or shall not be present at negotiations, or to control or influence these negotiations in any way, these being matters entirely between the parties.

11.

They move to strike all allegations with reference to the exclusion of Harper and Walker from negotiations which are referred to in the 36th to the 40th pages, for the reasons assigned in the next preceding paragraph of this Motion, and for the further reason that it appears from the bill that prior to the exclusion of Harper and Walker from these negotiations, the company has recognized the Association's representative. That since it had the right to do this, it had the right to decline to recognize the Brotherhood or to receive rep-
318 resentatives of the Brotherhood in these negotiations.

12.

They move to strike all averments from the 30th to 36th and 40th pages with reference to the complaints of Harper and Walker that pass privileges and other privileges were withdrawn from them and the Brotherhood, first, because the granting of these privileges was a matter solely between the company and its employes and it cannot be compelled to grant or extend them. Transportation is property, and the company cannot be compelled to carry any person free unless it chooses to do so, and second, because at the time these things are alleged to have occurred, the company had recognized the Association as representative of the Clerical Employees and this it had the right to do, and it therefore, had the right to decline to extend these privileges to representatives of the Brotherhood who were no longer representatives of the Clerical Employees as a whole.

13.

They move to strike the allegations in the 7th paragraph, pages 42 and 43, in which it is charged that the complainants have been deprived of property rights, because it is not shown with any detail that the things averred were property rights, nor is it shown what real estate the complainants would lose or what their interest in the real estate is, or how they would lose it, or what insurance they would lose or how they would lose it, nor any of the things stated in paragraphs 7 and 8 shown by proper averment to be property rights which would be impaired or lost by any wrongful act averred against the defendants.

319 Wherefore, they pray that the First Amended Original Bill of Complaint be dismissed.

C. L. CARTER,
J. H. TALLICHET,
C. R. WHARTON,
Attorneys for Defendants.
CALVIN GARWOOD.

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320 FIRST SUPPLEMENTAL ANSWER.

Filed March 12, 1928.

(Title Omitted.)

Comes now Texas and New Orleans Railroad Company, respondent in the above entitled and numbered cause, and, answering the first amended original bill of complaint filed herein on the 6th day of March, 1928,

leave of Court first having been had and obtained, files this, its first supplemental answer, in addition to, and supplementing its first amended original answer, and prays that this supplemental answer be considered in connection with said first amended original answer, and not as superseding any allegation of law or fact made therein, or any other matters set out in said pleading, or in any relief prayed for therein, all of the
321 matters and things alleged in said first amended original answer being here and now adopted as though specifically set forth herein.

I.

Respondent denies each and every allegation contained in the first amended original bill of complaint, except as expressly admitted in respondent's first amended original answer herein filed and in this, its first supplemental answer.

II.

Respondent specifically denies that the acts complained of in paragraph VI of the amended bill of complaint constitute a violation of Section 2, 44 Statutes, 577, referred to therein. Respondent further denies that it has failed to exert every reasonable effort to settle existing disputes with its clerical employees, but, on the contrary, avers that the said plaintiff, Brotherhood, has at all times failed to exert reasonable efforts to settle such disputes and controversies and that said Brotherhood has always assumed an unreasonable and arbitrary attitude in said matters, as a result of which respondents are unable to deal with said plaintiff Brotherhood.

III.

Paragraphs VIII and IX of respondent's first amended original answer, replying to paragraphs VII and IX of the original bill of complaint, apply in like manner to the matters referred to in paragraph VIII of the first amended original bill of complaint.

IV.

These defendants here and now specially adopt all allegations of law and fact made in the first amended original answer hereinabove referred to; also all defenses set out therein; and all prayers for relief made therein.

322 Wherefore, having fully answered herein, respondent prays that it be allowed to go hence, recover its costs, and other and further relief.

O. L. CARTER,
J. H. TALLICHET,
C. R. WHARTON,
CALVIN GARWOOD.

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323 BILL OF INTERVENTION OF A. R. CAMPBELL, B. G. HUDSON, R. E. STOTZER, JOHN C. MOULIN.

Filed March 13, 1928.

(Title Omitted.)

To the Honorable J. C. Hutcheson, Jr., Judge of said Court:

Now come A. R. Campbell, B. G. Hudson, R. E. Stotzer and John C. Moulin, leave having been granted to them to intervene herein, and represent to the Court

that they are interested in the litigation in the above entitled cause, and that their interest in said matters is common and general with the plaintiffs in this cause, and that they desire to intervene herein and make themselves party plaintiffs herein. And these interveners (hereinafter sometimes called "Plaintiff Interveners") state and allege as follows:

I.

That they are interested in the subject matter of this suit in that each and all of them are now and have at all times material to this controversy been clerical employes of the defendant Texas and New Orleans Railroad Company, and each and all of them
324 are now and have been at all times material to this controversy been engaged in the performance of clerical service as employes of the defendant Texas and New Orleans Railroad Company, and that each and all of them are directly interested in the issues and question in this suit. That each and all of said plaintiff interveners are clerical employes (railway clerks) of the defendant Texas and New Orleans Railroad Company, the said A. R. Campbell and B. G. Hudson being clerical employes in the local freight office of said railroad company at Houston, Texas, the said R. E. Stotzer being a clerical employe of the defendant railroad company at Seguin, Texas, and the said John C. Moulin being a clerical employe of the defendant railroad company at New Orleans, Louisiana, and each and all of said plaintiff interveners are citizens and residents of the places respectively of their employment and clerical service. They intervene in this suit and make themselves party plaintiffs or plaintiff

interveners in their own behalf, and as representatives of all other clerical employes and all other railway clerks in the employ of said defendant Texas and New Orleans Railroad Company in Texas and Louisiana (except general office employes), as well as on behalf of all others who are or may be similarly situated, and as well as for and on behalf of all other persons who may elect to associate themselves with plaintiffs and/or plaintiff interveners—all as authorized by Equity Rules Nos. 37 and 38. Said other clerical employes and other railway clerks in the employ of said defendant Texas and New Orleans Railroad Company in Texas and Louisiana (except general office employes) and the other and additional persons in whose behalf this intervention is filed and who are not herein specifically called by their names, number approximately 1700 persons, being clerical employes of the defendant railroad company throughout the States of Texas and Louisiana (except general office employes), but the exact number and their exact identity are so subject to fluctuation and change
325 by death or otherwise that it would be practically impossible to make each and all of them parties by name in this plea of intervention, and it is likewise and for the same reasons impracticable to bring all or nearly all of them before the Court by name. The plaintiff interveners and all other persons on whose behalf they bring and prosecute this plea of intervention are engaged in the same general class of employment for the same employer and form a general class of persons with a common and general interest in the subject matter of this suit.

II.

Plaintiff interveners here now adopt, approve, ratify and confirm each and all of the allegations, matters and

things set forth and contained in the plaintiffs' original bill of complaint filed herein, as well as contained in the plaintiffs' motion for contempt filed herein—as fully as though set forth at length herein and reiterated herein.

III.

Plaintiff interveners here now adopt, approve, ratify and confirm each and all of the allegations, matters and things set forth and contained in the plaintiffs' First Amended Original Bill of Complaint filed in this Court on the 6th day of March, A. D. 1928—as fully as though set forth at length herein and reiterated herein—including all exhibits attached to said First Amended Original Bill of Complaint, as well as all matters referred to therein, and also including the prayer for relief—all as though fully set forth, reiterated and embodied herein.

Wherefore, the petitioners, plaintiff interveners, pray the Court to make and cause to be entered an order permitting them to file this their Bill of Intervention herein, and pray the Court that they be permitted to associate themselves with the plaintiffs as parties
326 herein, and that they be permitted to maintain and prosecute this action to full and final effect, along with and associated with the original plaintiffs herein, especially praying for all of the relief prayed for and referred to in the pleadings of the original plaintiffs, particularly their First Amended Original Bill of Complaint, hereinabove referred to.

CARL G. STEARNS,
JOHN H. CROOKER,
Attorneys for Plaintiff
Interveners.

327 AMENDMENT TO BILL OF INTERVENTION.

Filed March 30th, 1928.

(Title Omitted.)

And now March 30, 1928, plaintiff interveners, by leave of the Court first had and obtained, amend their bill of intervention so that the third paragraph thereof shall and does read as follows:

"III.

Plaintiff interveners here now adopt, approve, ratify and confirm each and all of the allegations, matters and things set forth and contained in the plaintiffs first amended original bill of complaint filed in this Court on the 6th day of March, A. D. 1928, as further amended by order of this Court entered on March 30, 1928—as fully as though set forth at length herein and reiterated herein—including all exhibits attached to said first amended original bill of complaint, as well as all matters referred to therein, and also including the prayer for relief as amended by said order of this Court entered herein on March 30, 1928—all as though fully set forth, reiterated and embodied herein."

FULBRIGHT, CROOKER
& FREEMAN,
CARL G. STEARNS,
Attorneys for Plaintiff
Interveners.

329 AMENDMENT TO FIRST AMENDED BILL OF COMPLAINT.

Filed March 30, 1928.

(Title Omitted.)

And now, March 30, 1928, complainants, by leave of the Court first had and obtained, amend their first amended original bill of complaint so that the first paragraph of their prayer on pages 44, 45 and 46 of said first amended original bill of complaint shall and does read as follows:

"First: That the temporary injunction heretofore granted and issued herein by this Honorable Court be continued in force and that upon a hearing herein the same be made permanent and perpetual and that the defendant Texas and New Orleans Railroad Company, its officers, agents and employees, having and exercising executive, directory and/or supervisory powers over the railway clerks in the employ of said Texas and New Orleans Railroad Company in the States of Texas and Louisiana, be permanently and perpetually enjoined and restrained from in any way or manner interfering with, influencing, intimidating, or coercing plaintiff Harper or any of the approximately 1700 clerical employees (and being the clerical employees described and referred to in this petition which includes approximately 1700
330 railway clerks in the employ of the defendant railroad company on its lines throughout the States of Texas and Louisiana, except such clerical employees as are employed and engaged in its general office in the City of Houston, Texas, and in its general office in the City of New Orleans, Louisiana), with

respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant railroad company; and that said defendant railroad company and its aforesaid officers, agents and employees be further permanently and perpetually enjoined and restrained from in any way or manner interfering with, influencing, intimidating or coercing plaintiff Harper or any of said clerical employees herein referred to of their free and untrameled right of self-organization."

FULBRIGHT, CROOKER & FREEMAN,
CARL G. STEARNS,
Attorneys for Complainants.

331 State of Texas,
County of Harris.

H. W. Harper, first being duly sworn, deposes and says: that he is one of the complainants in the above entitled cause, and General Chairman of System Board of Adjustment of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, one of the complainants in the above entitled cause; that he has read the foregoing amendment to the first amended original bill of complaint herein, and knows the contents thereof, and that the same are true to the knowledge of deponent.

H. W. HARPER.

Subscribed and sworn to before me on this 30th day of March, A. D. 1928.

CARL G. STEARNS,
(Seal) Notary Public, Harris County, Texas.

332 OPINION ON MOTION TO VACATE CONTEMPT ORDER.

Filed April 19, 1928.

(Title Omitted.)

This is a motion to vacate or modify a contempt order entered in this Court on February 11, 1928, upon the grounds and for the reasons set out in the report of this cause in 24 Fed. (2) 426.

Defendants contend:

1. That the injunction was improvidently granted.

2. That the defendants did not violate the injunction.

3. That the contempt order exceeded the power and jurisdiction of this Court.

The first point, in connection with the trial on the merits, I have considered and disposed of adversely to defendants by making a temporary injunction heretofore issued permanent. (See opinion Brotherhood of Railway and Steamship Clerks, etc. et al vs. Texas & N. O. R. R. et al unreported).

The second point, that the injunction was not violated I think wholly untenable. It seems to be rested by counsel upon an entire misapprehension of the terms of the statute, and a failure to appreciate its effect and scope as a continuing obligation. Its corrective force may not be defeated by an Act or series of Acts. If it has any virtue, it protects an employee in his right to self

organization, and the selection of his representatives always. There never comes a time under that statute when the defendant perfects the right to force upon employees any representative of its choosing, whereas here the record teems with evidences not only of contracts between the Railroad Company and the Association for sole representation, but of continuing acts on the part of the company designed and tending to disrupt, disintegrate and destroy the Brotherhood, while establishing in the seats of the mighty the Association.

One of the Association's chairmen, all of whom are chief clerks to the management, testified that the growth of the Association had been due to its recognition by the Railroad and the refusal to recognize the Brotherhood, and he naively remarked that if this suit went in favor of the company, the Association would be able to take complete control, whereas, if it went the other way, the Association would fall; while others testified that if left to a vote uninfluenced by the company, the employees would not select the Association as representative, while all the other testimony established the continuing character of the interference by the defendant company, in the support and maintenance of the company union for its benefit and advantage, and the barring out of any and all other representation.

While I think the continuing character of the obligation not to interfere which the statute imposes on the company completely refutes defendants' position, and that this is so plain as not to admit of argument, upon the further ground that the matter was not a fait accompli when the injunction was issued, but had only begun, and that the effective interference with self organization and the designation of representatives which really made

itself felt occurred after the injunction was issued, this contention must be denied. (See Texas & New Orleans R. R. vs. Northside Railway Sup. Ct. April 9, 1928, not yet reported.)

As to the defendants' complaint that the contempt order has gone farther than the injunction, and that the Court has thereby assumed a jurisdiction beyond the terms of the statute, I think it sufficient to say that the contempt order has done nothing more than in the recognized jurisdiction of the Court, to restore the status quo ante, except in one particular which will be later noted.

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So clear is this power to restore the status that it has even been held that where a defendant with notice of the filing of a bill of injunction proceeds to complete the act sought to be enjoined, the Court may, by mandatory injunction, compel the restoration of the status quo. (Texas & New Orleans R. R. vs. Northside Belt Ry., Sup. Ct. April 9, 1928, unreported.)

In directing the railroad to disestablish the Association of Clerical Employees as it is now constituted as the recognized representative of the clerical employees of the Railroad Company the Court merely restored the status which existed at the time of the granting of the injunction, at which time this Association was in the process of formation, its representative character had not been established, and since that Association had been formed and promoted by the interference of the defendant company, and its recognition brought about as the effective act in such interference in violation of the injunction, the Court properly directed the Railroad Company not to recognize it as representative as presently constituted and established, leaving open to the employees the right by secret ballot, or by any other

way they desire, uninfluenced by dictation or interference by the defendant company, to select the Association if they choose, as their representative.

As to the restoration of Harper, Walker, of Stotzer, Hudson and Ginsburg, this also was merely an act of restoration of status, commanded in order to wipe out the effects and results of disobedience. Nothing in the order attempted to nor could it, fix any time or conditions to the continuance in place of these persons. It merely declared that the severance of these relations and the disturbance of the status quo as to
335 them, which the Court found from the evidence had been brought about through a deliberate violation of the injunctive order of the Court, must be undone, and inferentially that it should not occur again for the same or similar reasons. The particular in which the contempt order is perhaps subject to criticism and should be modified, is that part of it which after restoring the Brotherhood to its undoubted status quo as representative of the employees established both by contract of the company with them and the undisputed proof, undertook to limit to the taking of a secret ballot the processes under which this status quo could be changed.

This limitation was drawn from not only the established practice and rulings of the Labor Board but from the letter of the Railroad Company through Torian, its representative dated November 14, 1923, and thereafter acted upon—

"In conference yesterday I advised that the carrier would comply with Decision 1971 of the United States Labor Board and recognize the organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employees, by secret ballot, select other representation."

In view, however, of the abandonment by defendants during the trial of this case of that understanding, and the position taken by them that they do not believe that a secret ballot is a fair method of determining representation, I believe that that provision in the contempt decree, No. 3 thereof, should be modified by adding after "secret ballot" "or in any other manner decided by themselves, so that that provision of the contempt order will hereafter read—"Reinstating and reestablishing the said Brotherhood as the representative of the clerical employees in all matters relating to their employment by the said Railroad Company, disputes as to pay, working conditions, etc. substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this Court, or by any other means of selection which the employees themselves may decide upon and adopt, and without the dictation or interference of the said Texas & New Orleans Railroad Company, H. M. Lull, G. S. Waid, or J. G. Torian, shall choose another representative or representatives."

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As so modified, nothing in the order of February 11 in the slightest manner interferes with or prevents the lawful management and operation of the railroad by the defendant company. Nothing interferes with or prevents the employment or discharge of its employees in the legal and proper course of its business. Nothing in the decree requires the railroad company to recognize the Brotherhood any longer than such time as its employees, or some of them, in the exercise of the right granted them by the Act, shall see fit to have the Brotherhood represent them with the full right in the employees, or any amount of them, either by secret ballot

under the direction of the Court, or in any manner which they may determine, to select another or other representative.

The status restored was disturbed by the railroad company in violation of the law and of the injunction. From disturbing this status the railroad was and is expressly enjoined by the statute and the order of this Court. The employees however, not only have the right, but the right is expressly recognized in them, to appoint and establish any representative or representatives they may choose, the Association, or any other, so long as, and provided only, that the Railroad takes no part nor parcel in this selection.

If the company has the right under the law to compel the employees to deal with it through an Association organized, promoted, fostered and maintained by the defendant company, as the Supreme Court held under the law then existing the Pennsylvania Rail-
337 road had the right to do, then of course the injunction issued by this Court ought not to have been issued, and being issued, ought to be set aside.

But if the employees have the right which the statutes here say they have to freedom, in the matter of self organization and the selection of representatives, from interference, influence or coercion on the part of the defendant company, then the injunction has done no more than to insist upon that right, and the contempt order no more than to make that injunction effective.

From these views it follows that the request to modify the contempt order in the matter of making a secret ballot the exclusive means of determining representation is granted, and that the contempt order, as so modified by the insertion of the additional means for the selection

of representatives, as herein above set out, is reaffirmed and continued in full force, and the motion to vacate and dissolve it is denied.

Houston, Texas, April 19, 1928.

J. C. HUTCHESON, JR.,
Judge.

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338 ORDER DENYING MOTION TO DISSOLVE TEMPORARY INJUNCTION.

Filed April 19, 1928.

(Title Omitted.)

On this the 18 day of April 1928 in open Court and upon the evidence, affidavits and complete records as same were made upon the hearing of the application for the temporary injunction and the application and rule to defendants to show cause why they should not be held in contempt, came on to be heard the Motion of the Defendants filed herein on the 20 day of February, 1928, to dissolve the temporary injunction and restraining order entered herein on the 3rd day of August, 1927, and to set aside and dissolve the order and decree of contempt entered herein against the defendants, Texas & New Orleans Railroad Company, H. M. Lull, G. S. Waid, and J. G. Torian, on the 11th day of February, 1928, and to modify said temporary injunction and restraining order and, after due consideration, said motion is in all things overruled and denied, except as the contempt order is modified as shown by the opinion this

day filed, to which action of the Court the defendants then and there in open Court excepted and gave notice of appeal to the Circuit Court of Appeals of the United States for the Fifth Circuit.

J. C. HUTCHESON, JR.,
Judge.

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339 OPINION OF THE COURT.

Filed April 19th, 1928.

(Title Omitted.)

The Court having in this cause on July 29, 1927, issued a temporary injunction, and on February 11, 1928, a contempt order, defendants thereafter filed their motion to dissolve and vacate both.

Thereafter on March 12, 1928, the cause came on for final hearing on the merits, at which time full evidence and arguments were presented and heard, and the matter now stands for disposition of the defendants' motions above and on the merits, of plaintiffs' prayer for permanent injunction.

On this hearing the evidence more abundantly even than on the previous hearings established a deliberate disregard and violation of the terms of the statute, and after its issuance, of the temporary injunction, by the defendant company through a calculated and studied interference, both with the self organization, and the designation of representatives by the employees.

In addition, the genesis and motive of the entire activity of the defendants in organizing, promoting, and

maintaining the Association, and in endeavoring to disrupt and unseat the Brotherhood as representative, is made clear and plain through a letter written by Mr. Lull, one of the defendants in the contempt proceedings and Vice President of the Railroad Company,
340 to Mr. McDonald, its President, on May 24, 1927, prior to the activities complained of in this suit.

That letter in brief declared that there was pending from the General Committee of the National Organization of the Brotherhood of Railway Clerks a request for an increase of 10c per hour. That it was practically certain if the matter went to arbitration, an award would be rendered increasing the payroll $340,000 per annum. That he proposed to refuse arbitration upon the question of the right of the Brotherhood to represent the employees, and stated:—"This will permit us to get away from the interference of this organization, and if successful in this, I am satisfied we can make settlement with our own employees at a cost not to exceed $75,000 per annum." (Note 1.)

(Note 1.) Houston, Texas, May 24, 1927.
Mr. A. D. McDonald, President,
New York City, N. Y.

Dear Mr. McDonald:

Order of Railroad Telegraphers—

In the case of clerical and station service employees:

Every proceeding taken thereafter sprang from and may be read in the light of this program, which explains the vigorous and determined effort to seat the company

union as the sole representative of the employees, and gives full color to the persistent efforts thereafter to destroy the influence and activity of the Brotherhood.

Note 1 (Cont'd):

the General Committee of the National Organization of the Brotherhood of Railway Clerks filed, on November 2, 1925, a request for increase of 10c per hour. The granting of this request would involve an increase payroll expense of approximately $775,000.00 or about 20% for the classes of employees involved. Conferences were held with the committee, but no agreement could
341 be reached, as we did not feel that there was any proper basis for the increase asked for. In January, 1926, the organization filed the case with the United States Railroad Labor Board and it was pending before the Labor Board at the time the Board was abolished by the Railway Labor Act.

Following the abolition of the Labor Board further conferences were held with the organization committee, but no agreement could be reached, and the organization has invoked the service of the United States Board of Mediation. In the recent arbitration case on the lines west of El Paso the arbitrators awarded large increases, the majority of the clerical employees being awarded an increase of 5c per hour.

As our average rates for clerks are considerably lower than those on the Pacific Lines we could not expect any more favorable decision in case this matter went to arbitration and to apply on the lines east of El Paso the award rendered in the Pacific Lines case would mean an increased payroll cost of approximately $340,000.00 per annum.

From the best information we are able to obtain the majority of our clerical and station service employees do not belong to the National organization, and it is our intention, when handling the matter in mediation proceedings, to raise the question of the right of this organization to represent these employees, and if arbitration is proposed, we shall decline to arbitrate on the basis that the petitioner does not represent the majority of the employees. This will permit us to get away from the interference of this organization and if successful in this, I am satisfied we can make settlement with our own employees at a cost not to exceed $75,000.00 per annum.

One of our neighboring roads, the Kansas City Southern recently had a similar situation and declined to go into arbitration with an organization that did not represent a majority of its employees. The question of going into arbitration on any and all requests that are presented by miscellaneous classes of employees has been discussed with the managers of a number of railroads in the Southwest and it is the concensus of opinion that the lines should decline to arbitrate these matters, as there is no legal obligation to do so, and that these requests will continue to be presented in even greater numbers until the lines take a firm stand against arbitrating matters that should be settled in direct negotiation between the individual railroads and its employees.

Yours truly,

(Original Signed.)

H. M. LULL.

It may thereafter be affirmatively and easily found here that the fact findings made on the two preceding hearings before this Court, that the defendant company

was acting in direct and open disregard of the provisions of the statute, should be without hesitation reaffirmed.

The defendants say, however, that conceding these findings to be correct, they furnish no basis for injunctive relief. They say the statute which they
342 are disregarding is a mere Congressional gesture, has not the force of law, confers no rights imposes no penalties, provides no remedies, and that the case stands here as did the case of the Pennsylvania Federation vs. Pennsylvania R. R. Co., 267 U. S. 204. They argue that the Supreme Court in that decision has determined the very question here. That it has construed a statute having equivalent terms with this as inoperative, and not enforcible by Court decree, and that that decision controls this case.

That they are in error as to the effect of that case I think entirely plain. What was decided there was that the decisions of the Labor Board could not be enforced by injunction, the Court saying:

"What the complainants here are seeking to do is to enforce by mandatory injunction a compliance with a decision of the Board, not based on the legal rights of the parties, but on its judgment as to what legal rights the disputants should surrender or abate in the public interest. Such a remedy by injunction in a Court it was not the intention of Congress to provide."

What the complainants are seeking here to enforce is the centuries old right of representation, a right granted to the employees by Congress in mandatory language, that they should select their own representatives without interference by the Railroad Company. This and nothing more is here attempted, and I think it plain that

the question is res integra and has never been before adjudicated, except in the preliminary opinion in this case. (Note 2.)

Note 2.—Opinion Brotherhood Railway Clerks vs. Texas & N. O. R. R., 24 Fed. (2) 426.

So viewing it, I believe that in such a case as made here, from the maxim "ubi jus, ibi remedium" springs the equitable power in this Court to protect this most reasonable right granted by Congress from invasion.

The passage of this Act followed the decision in 267 U. S. supra, and in it Congress made effective as
343 law principles which in 261 U. S. The Supreme Court had approved as sound, but in 267 U. S. had declared unenforcible as law, because not expressed in Acts of Congress, but merely in decisions of the Labor Board.

It is the duty of this Court, wherever possible, to hold Acts of Congress virile, rather than sterile; constitutional, rather than unconstitutional, and where a right is claimed under an Act of Congress, to give it effective protection, especially where those who contest this right do so on arbitrary or interested grounds.

I recognize that the case in its legal aspects is not without difficulty, but feeling that that difficulty arises not out of any weakness in the underlying principle here invoked, that where Congress has granted a right the Court may protect that right by its injunction, but out of the doubt raised by defendants as to whether Congress has merely stated a correct principle, without establishing it as a right, that doubt I believe it my duty to resolve in favor of Congressional virility.

Upon the other point presented by counsel, that the statute, if operative, is unconstitutional, I have no diffi-

culty at all. Reason and authority alike declare and approve the existence of such legislative power in Congress, and I am satisfied to rest the matter on the opinion heretofore rendered in this cause. (Note 1.)

Note 1: See Opinion Brotherhood of Railway and Steamship Clerks, et al. vs. Texas & New Orleans R. R. Co., et al., 24 Fed. (2) 426.

Nor is the suggestion that the Clayton Act prevents this injunction of any force, if the assumption on which I have proceeded, that Congress, in view of the established custom of collective bargaining which has existed
344 for many years, has conferred a right on the employee in interstate commerce that he shall be truly represented by those who bargain for him, is sound.

It is just as much a property right of an employee to work in interstate commerce under a guarantee granted to him by Congress, that his wages and working conditions shall not be fixed for him without representation, as it is for an employer to have the right to continue operations in interstate commerce protected from activities of persons who would seek to prevent that operation, by inducing persons not to work for them, Both rights are imponderable and intangible, but neither less real and substantial than the other.

Finding no reason to believe that there was error in the granting of the preliminary injunction, and believing that that injunction should be made permanent, the motion of defendants to dissolve the temporary injunction will be denied, and a decree will be approved making it perpetual.

Houston, Texas, April 19, 1928.

J. C. HUTCHESON, JR.,
Judge.

345 ORDER MAKING TEMPORARY INJUNCTION PERMANENT.

Filed April 19, 1928.

(Title Omitted.)

The above entitled and numbered cause coming on to be heard on the 12, 13, 14, 15 and 30th days of March, 1928, and all parties thereto having appeared by counsel, and the Court having heard the pleadings, the evidence, and arguments of counsel, and upon due consideration thereof it appearing to the Court that the complainants should be granted the relief prayed for in their first amended original bill of complaint as further amended by order of this Court entered herein this day, it is therefore on this the 30th day of March, A. D. 1928,

Ordered, adjudged and decreed that the temporary injunction heretofore granted and issued by this Court herein on the 29th day of July, 1927, and entered in the office of the Clerk of this Court on the 3rd day of August, 1927, be and the same hereby is made perpetual and permanent, and that the defendant Texas and New Orleans Railroad Company, its officers, agents and employees, having and exercising executive, directory and/or supervisory powers over railway clerks in the employ of said Texas and New Orleans Railroad Company in the States of Texas and Louisiana, be permanently and perpetually enjoined and restrained from in any way or manner interfering with, influencing, intimidating, or coercing plaintiff Harper or any of the approximately 1700 clerical employees (and being the clerical employees described and referred to

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in complainants' first amended original bill of complaint heretofore filed herein, which includes approximately 1700 railway clerks in the employ of said defendant railway company on its lines throughout the States of Texas and Louisiana, except such clerical employees as are employed and engaged in its general office in the City of Houston, Texas, and in its general office in the City of New Orleans, Louisiana), with respect to their free and untrammeled right of selecting and designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant railroad company; and further permanently and perpetually enjoining and restraining said defendant railroad company and its aforesaid officers, agents and employees from in any way or manner interfering with, influencing, intimidating or coercing plaintiff Harper or any of said clerical employees herein referred to of their free and untrammeled right of self organization.

Nothing in this injunction shall be considered or construed as authority to prevent any employee of said defendant Railroad Company, in the class referred to, from organizing, joining, promoting, or fostering as many unions as he or they (meaning such employees in the class referred to) may desire, and in any way which he or they may desire, and with the assistance and aid of any of his fellow employees in any way and to any extent that said fellow employees (in the class referred to) may desire nor from proceeding as to them may seem best, in the selection or designation of representatives as aforesaid, nor shall anything in this injunction be considered or construed as authority or permission for any officer or agent of said company, or any employee,

acting for or on behalf of the defendant Railroad Company, attempting to influence or to interfere
347 with said selection or designation of their said representatives, or their right to self organization as herein referred to, upon any pretext that they are acting individually and not as representatives of said defendant corporation.

It is further ordered, adjudged and decreed that the defendant, Texas and New Orleans Railroad Company, pay the costs of these proceedings to be taxed by the Clerk of this Court, and that execution issue for the same, to which action of Court the defendants then and there in open Court excepted and gave notice of appeal to the Circuit Court of Appeals of the United States for the Fifth Circuit.

Houston, Texas, April 19, 1928.

J. C. HUTCHESON, JR.,
Judge.

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348 ORDER OVERRULING MOTIONS TO DISMISS BILLS OF COMPLAINT.

Filed April 30, 1928.

(Title Omitted.)

Now on the 30th day of March, A. D. 1928, came on to be heard the defendants first amended motion to dismiss and strike out complainants original bill of complaint and defendants supplemental motion to dismiss and

strike out the complainants first amended original bill of complaint, which motions were duly presented to the Court and argued by the solicitors for the respective parties hereto the Court thereupon overruled and refused to grant each of said motions, to which said act the defendants then and there in open Court excepted.

Enter:

J. C. HUTCHESON, JR.

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350 ORDER DISMISSING CERTAIN INDIVIDUAL DEFTS.

Filed May 2, 1928.

(Title Omitted.)

Now on the 12th day of March, 1928, the plaintiffs with leave of Court having filed their amended original bill of complaint, and it appearing to the Court that the sole defendant in said amended original bill is Texas and New Orleans Rai road Company, it is thereupon considered, ordered and decreed by the Court that this said suit be and the same hereby is dismissed with respect to the individual defendants as such, to-wit: A. D. McDonald, H. M. Lull, G. S. Waid, R. C. Watkins, J. G. Torian, F. H. Bednark, J. A. Prior, C. E. Armstrong, P. C. Gebhart, F. C. Ehlinger, J. C. McDaniel, and C. W. Derrington and that said defendants, A. D. McDonald, H. M. Lull, G. S. Waid, R. C. Watkins, J. G. Torian, F. R. Bednark, J. A. Prior, C. E. Armstrong, P. C. Gebhart, F. C. Ehlinger, J. C. McDaniel and C. W.

Derrington, go hence without day and that all costs incurred with respect to said individual defendants be and the same hereby are adjudged against the plaintiff, for which execution may issue, provided however, that nothing herein contained shall be held or deemed to dismiss or discharge the defendants, H. M. Lull, G. S. Waid and J. G. Torian from the decree heretofore entered with respect to them for contempt of Court in the violation of the temporary injunction heretofore entered herein; and provided further that nothing herein contained shall be held or deemed to dismiss or discharge any of the defendants named in this decree in their capacities as officers, agents, representatives or em-

351 ployees of the Texas and New Orleans Railroad Company from any liabilities which they have incurred in such capacities in connection with any of the matters or things involved in this cause.

J. C. HUTCHESON, JR.,
Judge.

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352 STIPULATION WITH RESPECT TO PLEADINGS FILED.

Filed July 13, 1928.

(Title Omitted.)

In the above entitled and numbered cause it is stipulated and agreed that all pleadings of all parties thereto which require an order of Court as a condition precedent to the filing thereof, were duly filed pursuant to orders of Court duly entered herein, but motions for

said orders, notices thereof, and said orders are omitted from the record herein, solely in the interest of brevity.

FULBRIGHT, CROOKER & FREEMAN,
Solicitors for Complainants.

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for Respondents.

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353 NOTICE OF LODGMENT OF STATEMENT OF EVIDENCE IN CLERK'S OFFICE.

Filed July 3, 1928.

(Title Omitted.)

To the Complainants in the above entitled and numbered Cause and to Messrs. Fulbright, Crooker & Freeman, their Solicitors of Record:

You will please take notice that the defendants in said cause by their solicitors, have this day lodged with the Clerk of the United States District Court for the Southern District of Texas at Houston, a statement of the evidence adduced at the hearings of the cause under Equity Rule 75 and that they will apply to said District Court, or the Judge thereof, for the settlement and approval of the statement of the evidence as a true, complete and properly prepared statement in that behalf and to become a part of the record therein on, to-wit: the 10th day of July, A. D. 1928, at 10:00 o'clock in

the forenoon in the Court rooms of the said District Court in the City of Houston, or at such further time or other place, either or both, as said Honorable Court or Judge may appoint.

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for the Defendants.

June 30, 1928.

We, the undersigned solicitors for the complainants in the above cause hereby acknowledge receipt of a duplicate copy of the foregoing notice this 30th day of June, A. D. 1928.

FULBRIGHT, CROOKER & FREEMAN,
Solicitors for the Complainants.

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354 ORDER TO SUBMIT STATEMENT OF EVIDENCE JULY 13, 1928, INSTEAD OF JULY 10, 1928.

Filed July 13, 1928.

(Title Omitted.)

Upon the sub-joined consent, it is ordered that the Statement of Evidence in the above case be submitted to this Court for settlement and approval the 13 day of

July, A. D. 1928 at 10 A. M. instead of on the 10th day of July, A. D. 1928 at 10 A. M. as originally noticed for.

July 10th, 1928.

J. C. HUTCHESON, JR.,
U. S. District Judge.

We request the entry of the above order.

FULBRIGHT, CROOKER & FREEMAN,
Solicitors for Complainants.

We consent to the entry of the above order without further notice.

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for Respondents.

355 Here follows Statement of Facts, Pages 355-1123, (Bound Volume.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

VOLUME II.

STATEMENT OF EVIDENCE.

TEXAS AND NEW ORLEANS RAILROAD COMPANY, ET AL.

Appellants.

versus No.....

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, ETC., ET AL.,

Appellees.

Appeal from the District Court of the United States for the Southern District District of Texas.
U. S. Circuit Court of Appeals Filed Aug. 2, 1928.
OAKLEY F. DODD,
Clerk.

367 STATEMENT OF THE EVIDENCE UNDER EQUITY RULE 75.

(Title Omitted.)

Be it remembered that upon the hearing of the above entitled matter upon complainants' application for a temporary injunction, on the 28th and 29th days of July, A. D. 1927, the following facts were adduced in evidence, to-wit:

368 COMPLAINANTS' EVIDENCE IN CHIEF.

Complainants introduced in evidence their original bill of complaint filed herein July 25, 1927, together with the exhibits thereunto annexed, which said original bill of complaint and the exhibits aforesaid are hereby referred to and made a part hereof fully as though the same were at length set forth herein.

Complainants next introduced in evidence the affidavit of E. L. GRIFFITH, made July 27th. 1927, as follows:

I am employed as receiving clerk in the Houston Local Freight Station of the Southern Pacific Lines. My seniority date is June 20, 1922. In my capacity as receiving clerk, I am employed under the supervision and direction of Mr. J. A. Sanders, Agent, and Mr. C. E. Armstrong, Assistant Agent, who have full authority to hire and fire and make promotions under bulletins.

On or about June 10, 1927, I was approached, during working hours, by Mr. C. E. Armstrong, who stated to me that he had a petition which I could look over and sign. He continued and said that the management had said that the company would not give the clerks a 'd--n' cent through the Brotherhood of Railway Clerks, but

that they have $75,000.00 in the treasury ready to distribute as an increase in pay among the clerks if they wanted it. He then handed me the petition to read. I called his attention to the fact that the petition made no mention of the $75,000.00 and I told him that I did not like to sign anything until I knew some-
369 thing about it. He then said that he knew nothing about it except what had been told him, and that he had been asked to pass the petition around. I then asked him how long they had had the money in the treasury to distribute among us, and why they had waited until now to say anything about it, and why they wanted us to sign that petition in order to get it knowing full well that we wanted a raise and had been after it for two years. He said in reply about as follows: 'It is just like I said—I know nothing about it except what I have been told. I have been asked to pass it around, and that is what I am doing.' I then told him that I did not want to sign the petition, and handed it back to him.

Complainants then introduced in evidence the affidavit of C. A. BRANDIN, made July 27, 1927, as follows:

I am employed as OS & D Clerk in the Houston Local Freight Station of the Sourthern Pacific Lines in Texas and Louisiana. My seniority date is July 3, 1923. In my capacity as an employe, I am under the supervision and direction of Mr. J. A. Sanders, Agent, and Mr. C. E. Armstrong, Assistant Agent, and T. D. Elam, Chief Clerk.

On or about June 10, 1927 while at my desk, and during regular working hours, I was approached by Mr. C. E. Armstrong and Mr. T. D. Elam. Mr. Armstrong greeted me with a statement substantially as

follows: "Old man, I know what I am up against but I was told to circulate this petition, and I am
370 obeying instructions." My reply to him was to the effect that I was glad to know that he had been made to do it, because I thought that he was too much of a man to do it on his own intiative. He then went on to say that they had advised him that the company had $75,000.00 to distribute among the clerks if 51 per cent of the Clerks would sign the petition which he held in his hand, authorizing the Clerical employes Association to represent them in matters now pending, and further stated that the company would not give the Clerks one penny through the Brotherhood of Railway Clerks, but stood ready and willing to grant them the sum of $75,000.00 as an increase through the Clerical employes Association. I replied that I had listened to their persistent refusal to our request for an increase for two years and that, if we could not get an increase through a legitimate organization, that I was willing to continue at present rates of pay.

I am the regularly elected and duly authorized Division Chairman of the Brotherhood of Railway Clerks for the Houston Terminal Division.

Defendants' evidence in Chief:

Defendants introduced in evidence the affidavit of J. G TORIAN, made July 28, 1927, together with Exhibit No. 1 and Exhibit No. 2 thereunto annexed, as follows:

My name is John G. Torian. I am, and for ten years past have been, a resident of the City of Houston, Harris County, Texas. I am Assistant to the Vice President and General Manager (both in Texas and Louisiana) of Texas and New Orleans Railroad Company, a corpora-

tion, which owns and operates and leases and
371 operates lines of railroad within and between the States of Texas and Louisiana. My duties consist principally in dealing with relations between said Company and its employees in the matter of wages, working conditions, grievances and similar matters, which are usually discussed and disposed of by representatives of organizations of employees, on the one hand, and by representatives of the Railroad Company, on the other.

I am entirely familiar with the several matters and things involved in the above entitled and numbered cause.

The plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees Southern Pacific Lines in Texas and Louisiana, was first officially recognized as an organization representing railway clerks employed by Texas and New Orleans Railroad Company and other Southern Pacific Lines by virtue of Supplement No. 7 to General Order No. 27 of the Director General of Railroads, which was effective on September 1, 1918.

Said organization originally claimed to represent, or have the right to represent, all clerical employees of the Southern Pacific Lines in Texas and Louisiana, all said lines now being leased and operated by Texas and New Orleans Railroad Company, but since the termination of Federal control of railroads it has been determined that said organization has not the right of representing, and it does not now pretend to represent, any of the clerical employees in the general offices at Houston, Texas, or New Orleans, Louisiana, and falling within said classification. There are now employed on the lines operated by Texas and New Orleans Rail-
372 road Company approximately 1,855 clerical employees, exclusive of the general office employees, hereinbefore referred to, and an organization known as

Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, which is a voluntary association, claims to represent a majority of said employees under written authorizations from such majority. This organization is hereafter referred to as "Association." The complainant in this proceeding is hereinafter referred to as "Brotherhood." The Brotherhood also claims to represent a majority of said employees. The officers of the Association have tendered to affiant, in his official capacity, written authorizations claimed to be held by the Association of a majority of the said clerical employees, but affiant, acting for Texas and New Orleans Railroad Company, has declined to receive or act upon the same until a certain pending request for certain changes in rates of pay, made by the Brotherhood and recently the subject of mediation between said Railroad Company and said Brotherhood, shall have been disposed of or dismissed by the United States Board of Mediation, represented in this matter by Hon. Pat M. Neff, a member of said Board.

When the said pending matter shall have been disposed of or dismissed by the said United States Board of Mediation, it is the purpose of affiant to consider the said request and the said alleged authorizations of the Association and thereupon to treat with and to consider, as representatives of the clerical employees of Texas and New Orleans Railroad Company, said organization, provided it shall have authority to act for any to

373 represent a majority of its clerical employees.

Said Brotherhood has no contract or agreement whatsoever with said Texas and New Orleans Railroad Company, nor have the clerical employees, other than the general office employees, of said Railroad Company any contract or contracts whatsoever with it, save and except certain memoranda bearing date July

1, 1922, (hereunto attached, marked "Exhibit No. 1") and May 16, 1924, (hereunto attached, marked "Exhibit No. 2",) and said Texas and New Orleans Railroad Company has no purpose or intention to suspend or modify any of the rules set forth in said documents, save and except by agreement with the representatives of its said clerical employees or save and except as it may be authorized by law, and this irrespective of whether the Association or the Brotherhood shall hereafter represent said clerical employees. Said Texas and New Orleans Railroad Company has never recognized the Brotherhood as the representative of its said clerical employees save and except as required to do by decisions of the United States Railroad Labor Board, No. 1971, rendered December 21, 1923, and No. 2138, rendered February 21, 1924, and it is not, and has never been, the purpose or intent of said Railroad Company, or its predecessors in the ownership or control of the properties now operated by the Railroad Company, to recognize or deal with said Brotherhood, except as required to do so by the decisions aforesaid, which will be of no further force or effect in the event the said Association shall present to said Railroad Company evidence that it is authorized to represent a majority of the said clerical employees; that while it is provided in the rules hereinbefore
374 referred to that should either the employees or the management desire to revise or modify the same, thirty days' written advance notice containing proposed changes, shall be given and conference shall be held immediately upon the expiration of the said notice, it is not provided in said rules, and has never been agreed upon by the Railroad Company, that the Brotherhood shall continue to represent the clerical employees for any period whatsoever after they may have ceased to represent a majority of the clerical employees.

The Brotherhood has at all times been extremely radical in its attitude and has made and presented many unreasonable demands on the Railroad Company and, while its officers have conducted themselves, and still conduct themselves, as acutely hostile to the interests of the Railroad Company, the Railroad Company has not undertaken to cause the formation of the Association and has never interfered with, influenced or coerced, or attempted to interfere with, influence or coerce the clerical employees with respect to membership in either the Brotherhood of the Association. Many of the officers and employees of the Railroad Company, and particularly the officers and employees the work of whose departments or stations is most directly affected by loyalty, industry and interest in the welfare of the Company on the part of clerical employees, other than those in the general offices, have a strong interest in the selection by said employees of an organization to represent them which will endeavor, as they believe and as affiant believes the Association will do, to co-operate with their employer and to deserve rather than to demand, without
375 deserving, favorable action in the matter of wages and working conditions. Nevertheless, most of said officers have not interfered, by word or deed, between the Association and the Brotherhood in the efforts of both to secure members or authorizations to act for employees. Several of said officers and employees have and, unless and until it shall be declared unlawful for them to do so, (as affiant believes) intend to continue by advice, reasonable argument and presuasion to present to said employees the advantages, as they see it, of said employees being, becoming or remaining members of the Association rather than of the Brotherhood, and beyond this no officers of the Railroad

Company have gone or, as affiant is informed and verily believes, intend to or will go. The officers who have so acted are not above the rank of Assistant Superintendent and the employees not above the rank of agent.

Said Railroad Company has not interfered and, as affiant believes, does not intend to interfere, one way or the other, in the action or non-action of any of said officers and employees.

Affiant denies that any coercion whatsoever has been used by any officers of the Railroad Company with respect to the matters herein contained or any other matters affecting the relations between the Railroad Company and its said clerical employees.

Affiant wrote and transmitted to the parties addressed letters in substance as set forth on pages 23, 24 and 25, of the bill of complaint filed herein. Said letters were intended to be made public by the parties to
376 whom they were addressed for the purpose of contradicting and counteracting numerous erroneous statements of fact which were persistently made and circulated by the Brotherhood and its officers. Said letters correctly set forth the facts and, in somewhat general terms, the intentions of affiant and of the Railroad Company in this matter.

It is not a fact that, should a majority of the clerical employees of the Railroad Company, other than those in general offices, elect to be represented by the Association and should affiant and the Railroad Company deal with the Association and not with the Brotherhood, the clerical employees now members of the Brotherhood will be forced to withdraw from membership therein or that the Brotherhood will, of necessity, be dissolved. In fact, any employee of the Railroad Company may be a mem-

ber of any organization irrespective of whether the Railroad Company has contracts or deals with said organization or not.

With respect to the allegation in the bill of complaint alleging refusal to issue passes to a nominal employee on the alleged ground that he is a member of the Brotherhood: No employee has been refused passes because of membership in any organization, the Brotherhood included, but the issuance of passes is a matter of grace and is properly dependent, to a certain extent, on the nature of the work, satisfactory or otherwise, of the employee requesting such favor and, in fact, the general rules of the Railroad Company with rspect to passes provide that officers will decline to issue passes for employees who have not shown zeal in the discharge of their duties.

377 EXHIBIT NO. 1, referred to in above affidavit of J. G. Torian:

"Southern Pacific Lines in Texas and Louisiana.
Rules covering all Clerical and Station Employees except General Office Forces.

Efffective July 1st, 1922.

Memorandum.

Pursuant to the requirements of the Transportation Act of 1920 and Decisions 630 (Docket 475) and 1074 (Docket 1300) of the United States Railroad Labor

Board, the following rules, applicable to all clerical and station forces, (except General Office forces), are placed in effect July 1, 1922, on the Southern Pacific Lines in Texas and Louisiana. It is understood and agreed that these rules are subject to the provisions of the Transportation Act of 1920 and that the same dispose of all questions remanded to the carriers and the employees by the United States Railroad Labor Board in Decision No. 630.

J. G. Torian Assistant to Vice-President and General Manager.

J. J. Quill, Vice-General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and station Employees.

378 Ralph J. King, General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

H. W. Harper, General Secretary-Treasurer, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Houston, Texas, July 1, 1922.

Hours of service and working conditions Governing Employees herein named.

Scope. Article 1.

Rule 1. These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions noted below:

(1) Clerks.

(a) Clerical workers.

(b) Machine operators.

(2) Other office and station employees—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, operators of certain office or station appliances and devices, telephone switchboard operators, elevator operators, office station and warehouse watchmen and janitors.

(3) Laborers employed in and around stations, storehouses, and warehouses.

Exceptions.

(a) These rules shall not apply to laborers on coal and ore docks; or to laborers on elevators, piers, wharves, or other water-front facilities not a part of the
379 regular freight stations forces; or to individuals where amounts of less than thirty dollars ($30) per month are paid for special services which take only a portion of their time from outside employment or business; or to individuals performing personal service not a part of the duty of the carrier.

(b) These rules shall not apply to the personal office force of such officers as trainmaster, division engineer, master mechanic, or their equals or superiors in official rank. This designation will apply to positions of a direct and confidential nature and in each case the duties and responsibilities of the employee shall govern. The appointing officer to be the judge, subject to appeal as provided in Article 4.

(c) These rules shall not apply to chief clerk of supervisory agent at the following stations:

El Paso,
San Antonio,
Houston,
Galveston,
Beaumont,
New Orleans,
Dallas,
Fort Worth,
Austin,
Lufkin, and Shreveport.

(d) These rules shall not apply to the foreman who supervises sub-foremen at Houston and New Orleans.

380 (e) These rules shall not apply to the General Office forces of the Southern Pacific Lines in Texas and Louisiana.

Rules 2 and 3—Eliminated.

Definition of Clerical workers, Et Cetera.

Article 2.

Rule 4. (a) Clerical workers—Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports and statements, handling of correspondence and similar work.

(b) Machine operators—Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones and other similar equipments.

The foregoing definitions, paragraphs (a) and (b), shall not be construed to apply to:

(1) Employees engaged in assorting tickets, waybills, etcetera, nor to employees operating office or station appliances or devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and othe papers, adjusting dictaphone cylinders and work of like nature; nor to employees gathering mail or other similar work not requiring clerical ability.

(2) Office boys, messengers and chore boys, or to other employees doing similar work.

381 (3) Students and apprentices qualifying for specific clerical work or as machine operators.

(4) Employees performing manual work not requiring clerical ability.

(c-1) Clerks without previous experience hereafter entering the service will be paid a month salary in accordance with wage orders for the first six months and a monthly salary in accordance with wage orders for the second six months.

(c-2) On completion of one (1) year of experience, clerks will be increased to the minimum daily rate as prescribed by wage orders for clerks with less than two (2) years of experience.

On completion of the second year of experience they will be paid the regular rate applying to the position held, subject to the minimum daily rate which is applicable under wage orders to clerks who have had two (2) or more years of experience.

382 Seniority.

Article 3.

Rule 5. Seniority begins at the time employee's pay starts on the seniority district and in the class to which assigned.

Where two or more employees enter upon their duties at the same hour on the same day, employing officer shall at that time designate respective rank of such employees.

Rule 6. Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions.

Note No. 1. The word "sufficient" is intended to more clearly establish the right of the senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.

Rule 8. New Positions and vacancies in permanent positions, (including temporary vacancies of more than thirty days,) will be bulletined in each office in the district where they occur for a period of five (5) days; bulletin to show location, title, hours of service and rate of pay applying. Employees desiring such positions will file their applications with officer whose name appears on bulletin within that time and assignments will be made within ten (10) days thereafter. The name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined. This rule shall not apply to laborers or to other than the clerical employees classified under paragraph (2) and (b) of Rule 4, Article 2.

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Note. The rate as referred to in this rule shown on bulletined positions for clerical employees will be the rate applying to clerks with two (2) or more years of experience.

Rule 15. An employee returning after leave of absence may return to former position or may return or within three (3) days thereafter exercise seniority rights to any position bulletined during such absence. Employees displaced under this rule may exercise their seniority in the same manner.

Rule 18. A seniority roster of all employees in each seniority district, showing name and proper dating will be posted in agreed upon places accessible to all employees affected. The rosters will be revised and posted in January of each year and will be open to protest for a period of sixty (60) days from date of posting. Upon

presentation of proof of error by an employee or his representatives, such will be corrected. The
384 duly accredited representative of the employees shall be furnished with a copy of the roster upon request.

Rule 19. Seniority rosters will show the name and date of entry of the employees into the service of the railroad, except that names of laborers will not be included and their seniority rights will not apply until they have been in continuous service of the railroad in excess of six (6) months.

Discipline and Grievances.

Article 4.

Rule 27. Sec. (a) An employee disciplined or who considers himself unjustly treated, shall have a fair and impartial hearing, provided, written request is presented to his immediate superior within five (5) days of the date of the advice of discipline and the hearing shall be granted within ten (10) days thereafter.

Sec. (b) A decision will be rendered within seven (7) days after completion of hearing. If an appeal is taken, it must be filed with the next higher official and a copy furnished the official whose decision is appealed, within fifteen (15) days after date of decision. The hearing and decision on appeal shall be governed by the time limits of the preceding section.

Sec. (c) At the hearing, or on the appeal, the employee may be assisted by a committee of employees, or by one or more duly accredited representatives.

385 Sec. (d) The right of appeal by employees or representatives in regular order of succession and in the manner prescribed, up to and inclusive of the highest official designated by the Company to whom appeals may be made, is hereby established.

Sec. (e) An employee on request will be given a letter stating the cause of discipline. A transcript of the evidence taken at the investigation or on the appeal will be furnished on request to the employee or representative.

Sec. (f) If the final decision decrees that charge against employee was not sustained, the record shall be cleared of the charge; if suspended or dismissed, employee will be returned to former position and compensated for the wage loss, if any is suffered.

Sec. (g) Committees of employees will be granted transportation over the lines covered by these rules and necessary leave of absence for investigation, consideration and adjustment of grievances.

Leave of Absence.

Article 5.

Rule 28. Unlimited leave of absence will be granted in case of sickness or in case of official promotion, whether with the Company or the organization. Other leave of absence will not be granted to exceed
386 sixty (60) days, with extension of thirty (30) days, at the discretion of the division officer, except that an employee who has been in the service three years or more may be granted leave of absence for ninety

(90) days with an extension of ninety (90) days, at the descretion of the division officer. It is understood leave of absence will not be granted to an employee for the purpose of accepting employment on any other railroad.

General.

Article 12.

Rule 56. Sec. (a) Where the term "Duly accredited representative" appears in these rules it shall be understood to mean the regularly constituted committee representing the class of employees on the railroad where the controversy arises, or any representative or representatives the employees directly interested may select or designate.

Sec. (b) No discrimination will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organizations.

Rule 63. Employees covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in service.

387 General committees representing employees covered by this agreement will be granted the same consideration as is granted general committees representing employees in other branches of the service.

Rule 68. The foregoing rules supersede all previous rules and practices and are effective from July 1, 1922, and shall continue in effect until changed as provided

herein or under the provisions of the Transportation Act, 1920. Should either the employees or the Management desire to revise or modify these rules, thirty (30) days written advance notice containing proposed changes shall be given and conference shall be held immediately upon the expiration of said notice, unless another date is mutually agreed upon.

General Instructions.

The rules herein adopted where similar to the rules in the National Agreement are not to be understood or construed as carrying with them the interpretations placed on same by the United States Railroad Administration, by the Adjustment Boards or by other agencies acting under said Administration, but are to be considered and constructed as new rules adopted by the Labor Board in accordance with the Transportation Act of 1920, and the principles enunciated in Decision 119. Should a dispute arise between the Management and the employees as to the meaning and intent of the rules handed down in Decision 630, which cannot be
388 decided in conference between the parties directly interested such dispute shall be handled in the manner provided by the Transportation Act of 1920.

389 EXHIBIT NO. 2, referred to in above affidavit of J. G. Torian:

"Southern Pacific Lines in Texas and Louisiana.

Addendum No. 1 to Clerks' Schedule of rules, effective July 1st, 1922, covering all Clerical and Station forces except General Office forces.

Effective May 16, 1924.

Addendum No. 1 to Clerks' schedule of rules, effective July 1, 1922, Covering all Clerical and Station Employees except General Office forces.

Effective May 16, 1924, the following additions and changes are made in the schedule of rules applicable to clerical and station employees, except general
390 office employees, placed in effect July 1, 1922, under Decisions Nos. 630 and 1074 of the United States Railroad Labor Board.

For the Employees:
H. W. HARPER,
General Chairman, Brotherhood of Railway and Steamship Clerks.
M. M. McNEEL,
W. P. HARPER,
Vice-General Chairman, Brotherhood of Railway and Steamship Clerks.
For the Carrier:
J. G. TORIAN,
Assistant to Vice-President and General Manager.

Signed at Houston, Texas, May 9, 1924".

391 Defendants next introduced in evidence the affidavit of F. C. EHLINGER, made July 27, 1927, as follows:

My name is F. C. Ehlinger and I am a resident of Ennis, Ellis County, Texas, and have been for six years. I have been in the service of Texas and New Orleans Railroad Company and other Southern Pacific Lines for fourteen years, begining November, 1913 as Construction Timekeeper. I am now Chief Clerk in the Superintendent's office at Ennis, Texas.

I am a member and am General Chairman of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

I am familiar with the history of said organization and with its purposes. Said organization had its origin in March, 1923. In a letter written by me to the Chief Clerks of the various Superintendents of the Southern Pacific Lines in Texas and Louisiana I proposed an organization of members of personal office forces and division office clerks, including division accounting bureau, dispatcher's office, division engineer's office and master mechanic's office, to the end that we might deal with the management in the matter of rates of pay, working conditions, etc., wholly separate and apart from the organization of Brotherhood of Railroad Clerks, with which I was dissatisfied and with which I was advised many others were dissatisfied, it being my view and the view of many others that a less radical organization was extremely desirable and that co-operation with the officers of the Company rather than antangonism was desirable. Practically one hundred percent of the clerical employees within the limits above mentioned
392 became members of the proposed organization, which communicated the fact of its formation and purposes to the management of the Company. We were then informed by Mr. J. G. Torian, Assistant to the Vice President and General Manager, that under the

law the management was compelled to deal with all clerical employees, outside of general office forces, as one class and could not deal with the forces in the superintendents' offices separately from the station clerks and other clerical forces. As a result of this advice we, that is, the members of the organization referred to, undertook to extend, and did extend, the membership to all clerical employees on the Southern Pacific Lines in Texas and Louisiana, outside of and except general office employees, that is, employees in the general offices of the Company at Houston and at New Orleans.

We secured a large membership, amounting to a substantial majority of all employees of the Southern Pacific Lines in Texas and Louisiana entitled to membership, and we thereupon requested the management of said Southern Pacific Lines and of said Texas and New Orleans Railroad Company to recognize our organization as the organization representing a majority of such employees. The management in view of the declared policy of the United States Railroad Labor Board in such matters, caused a secret ballot to be taken of the clerical employees, outside of general office clerks, to determine whether they wished to be represented by the Brotherhood of Railway Clerks or the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. There were a total of 1,635 such employees entitled to vote. Of these 1,073 voted, of whom 611, by
393 their ballots, favored the Brotherhood of Railroad Clerks and 462 favored the Association of Clerical Employees. The question whether this ballot should override our majority of the signed authorizations went before the United States Railroad Labor Board and was decided on September 21, 1923, by Decision No. 1921 of said Board, that the majority of the ballots cast would control.

Accordingly, said Brotherhood of Railroad Clerks continued to represent the clerical employees, outside of the general offices, and the Association became dormant. Nevertheless, the extremely radical character of the Brotherhood of Railroad Clerks remained exceedingly distasteful to me and to many other of the clerical employees of the Southern Pacific Lines and we have, accordingly, determined to revive, and have revived, the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, which is now an active organization.

I am not an official of Texas and New Orleans Railroad Company or of the other Southern Pacific Lines in any sense and am eligible to membership in either of the organizations above referred to. My activity in the revival of and securing members for said Association is purely personal and is not at the direction or suggestion of any officers of said Texas and New Orleans Railroad Company.

I have seen the affidavits of W. R. Turk and of R. H. Collins, employees in the Local Freight Office of said Texas and New Orleans Railroad Company at Dallas, attached to the bill of complaint filed in this suit, and while, with a few exceptions, they are substantially correct, they require the explanation that neither of said parties is subordinate to me and the statement of W. R. Turk to the effect that he is subordinate to me is not in accordance with the facts.

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Reference made by me to the question of vacation was for the purpose of drawing out from Turk the fact that, notwithstanding the fact that provisions for vacations promulgated by the United States Railroad Labor Board are now contained in the rules, the agent has a great

deal to do with determining whether or not a vacation may be taken by any particular man or at any particular time.

I did not state to either of said parties that I had any assurance, direct or indirect, that the Association would obtain increases in pay, but I did state that I believed, as I do in fact believe, that the Brotherhood of Railway Clerks has a membership paying dues of only about 20 per cent of the total employees of these Lines entitled to membership, and that because of the small number of employees really represented, and because of the radical and arbitrary methods adopted by said organization in attempting to deal with the Railroad Company, it would not be able to get any substantial pay increase or other benefits from the Company, except perhaps by appeal to the highest tribunal, whereas I believed, and do believe, that the Association, approaching the matters referred to in a spirit of co-operation, would be able voluntarily to obtain benefits for the employees which the more radical organization could not obtain. I also told all employees with whom I talked that I wished them to forget that I was Chief Clerk to the Superintendent
395 and to regard me simply as a clerical employee on the division who was attempting to benefit all employees in that capacity, and, finally, that I wished them to act on their own judgment—that if they really favored the Brotherhood of Railway Clerks, I did not want them to sign, but if they really did not favor the Brotherhood of Railway Clerks, that I hoped that they would become members of the Association.

With respect to interviewing clerks during office hours: This has also been frequently done by officers of the Brotherhood of Railway Clerks, particularly by General Chairman H. W. Harper, of that organization.

Defendants then introduced in evidence the affidavit of J. C. McDaniel, made July 27, 1927, as follows:

I have been served with subpoena in the above entitled and numbered cause and, therefore, assume that I was intended to be made a party defendant therein under the erroneous name, J. C. McDaniels. My name is in fact J. C. McDaniel.

I am a resident of the City of Houston, Harris County, in the Southern District of Texas, and have been for twenty-four years. I am employed by Texas and New Orleans Railroad Company as Chief Yard Clerk at its Englewood Yards. I have been employed by said Company and other Southern Pacific Lines for twenty-four years, beginning as a Yard Clerk.

I am a member, but not an officer, of the Association of Clerical Employees of the Southern Pacific Lines and, as such, have endeavored, and am still endeavoring, to obtain additional members for said organization
396 among the clerical employees of said Southern Pacific Lines. I prefer the organization of which I am a member to the organization which is complainant in this cause principally for the reason that I prefer to be a member of, and be represented by, a more conservative organization.

In my activity in the matter of securing members for the organization of which I am myself a member is in my own interest and in the interest of my fellow employees and it is not, and has not been, at the instance or request of Texas and New Orleans Railroad Company, or its officers. Nevertheless, I am advised, and believe, that the officers of said company are favorable to the just objects of the organization of which I am a member.

In 1924 I was General Chairman of the Association of Clerical Employees of Southern Pacific Lines, but in that year I ceased to be an officer of the organization and have taken no active part in its affairs other than to secure members in Houston.

Defendants then introduced in evidence the affidavit of C. W. Derrington, made July 28, 1927, together with Exhibit No. 1 thereunto annexed as follows:

I have been served with subpoena in the above entitled and numbered cause.

I am a resident of the City of Houston, Harris County, Texas, and am Chief Clerk in the office of Superintendent, Terminals Division. I have resided in the City of Houston for nine years and I have been employed by Texas and New Orleans Railroad Company and other Southern Pacific Lines for fourteen years.

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I am what is known as a clerical employee, other than general office clerical employee, and am eligible to membership in either the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, or the Brotherhood of Railway and Steamship Clerks, etc. I am in fact a member, though not an officer, of the Association of Clerical Employees. As a member of this organization I have endeavored, and am still endeavoring, to secure, by persuasion and fair argument, but not by coercion or any other means, members for said Association.

I have done so of my own motion and in co-operation with other members and officers of the Association and not at the instance or request of Texas and New Orleans Railroad Company or of any of its officers.

I have read the affidavits of J. C. McDaniel and F. C. Ehlinger dated July 27, 1927, and I hereby reiterate the general statements therein contained.

In some instances I have asked agents and assistant agents of the Railroad Company to assist me in endeavoring to secure members for the Association and in some instances this assistance has been rendered. I have felt justified in asking for this assistance because of what appears to me the unfair methods used by the officers of the Brotherhood of Railway Clerks in endeavoring to secure authority to represent employees. As an example, I attach hereto, and mark it "Exhibit No. 1" and make it a part of this affidavit, a printed form which is being circulated by the Brotherhood of Railway Clerks, which devotes a great deal of its space to questions
397-a whether the clerical employees desire increases in pay and at the end in a very unobstrusive space contains an authorization to the said Brotherhood of Railway Clerks to represent parties who are requested to sign same.

EXHIBIT NO. 1.

Referred to in the above Affidavit of C. W. Derrington.

The Brotherhood of Railway Clerks, on the Southern Pacific —Pacific System, on April 16, 1927, secured an increase of five (5) cents per hour ($10.20 per month), retroactive to January 1, 1927, with back pay to cover. The Brotherhood Committee on these Lines has a case, now being handled by the U. S. Board of Mediation, in which the employees request an increase of ten (10) cents per hour for all classes of employees represented

by the Brotherhood. Our request is for a greater increase than was obtained on the Pacific System, but there is a complete justification for the ten cents which we are asking as our rates have always been more than five cents per hour below the rates paid on other railroads in the Southwestern territory, and the ten cents requested would no more than bring us up to the level on other roads.

The Brotherhood Committee has been meeting with former Governor Neff, who is the Government Mediator in our case, in daily conferences since June 2. The Management contends that our request is "unjust and unequitable," and that the employes themselves will not support the Brotherhood Committee in contending for ten cents per hour. In order to obtain the true sentiment of each and every employe in regard to this
398 matter, it is requested that each employe (both members and non members) fill out and sign the questionnaire below, and forward same by return mail, to H. W. Harper, General Chairman, 211 Moore Building, San Antonio, Texas.

.....
Location. Date.

.....

Title of your position. Rate. Office or Department.

Do you think that we are entitled to an increase of as much as 10 cents per hour? .....

Would you be agreeable to a settlement for a sum less than (10) cents per hour? .....

If so, what amount do you believe would be just and reasonable? .....

The above is an expression of my wishes in regard to the matter of an increase in pay, which is now being handled by the U. S. Board of Mediation, and I hereby

authorize the Brotherhood of Railway Clerks to represent me upon the basis as outlined above.

(Signed) .....

COMPLAINANT'S REBUTTAL EVIDENCE.

Complainants next introduced in evidence the affidavit of H. W. Harper, made July 28, 1927, together with Exhibits Nos. 1, 2, and 3 attached thereto as follows:

My attention has been directed to affidavit of John G. Torian filed in the above entitled and numbered cause on July 28, 1927. With respect to Mr. Torian's affidavit beg to submit the following facts: The organi-
399 zation which the defendant Railroad Company terms "The Association" and which the plaintiffs in this case term "Company union," has not written authorizations of a majority of the clerical employees involved in this suit, and such written authorizations held by said "company union" have largely, if not altogether, been obtained by and through the use of improper interferences, influence, and coercion exercised in the manner and under circumstances referred to in plaintiff's petition. In this connection affiant further says that there are not 1,885 clerical employees of the kind and character and performing the services of clerks referred to in plaintiffs' petition, but that there are only about 1,700 and in no event to exceed 1,750 of said clerical employees; that the 1,855 clerical employees referred to in Mr. Torian's affidavit evidently include approximately 110 employees constituting the personal office force of such officers as train-master, division engineer, master mechanic, or their equals or superiors in official rank, and

in this connection affiant says that said 110 employees have never been treated by either the defendant railroad company, nor employees generally, nor by the plaintiff Brotherhood as coming within the number of clerical employees usually governed by the contracts and agreements between employer and employees covering wages, working conditions, et cetera. In this connection affiant says that subdivision (b) of Rule 1 of Art. 1, of the written contract effective July 1, 1922, expressly excepts and excludes said 110 employees, which rule and the exclusion therein provided for was inserted at the insistence of the defendant Railroad Company
400 for the reasons referred to immediately under the rule and the position of the defendant Railroad Company is made plain by a letter dated June 21, 1923, signed by Mr. J. G. Torian, wherein the Defendant Railroad Company agree that said approximately 110 employees should not be included in considerations touching the general clerical employees of said Railroad Company,—a copy of this letter is hereto attached and referred to as Exhibit 1.

Affiant further says that the defendant Texas and New Orleans Railroad Company has recognized the plaintiff Brotherhood as a representative of its said clerical employees other than as required to do by decisions of the United States Railroad Labor Board, in that (a) on August 5, 1926, (after the repeal of the Transportation Act of 1920 authorizing and providing for the Railroad Labor Board) defendant Railroad Company, acting through Mr. Torian, treated with and advised with the plaintiff Brotherhood with respect to the board or boards to take care of different classes of employees engaged in or having disputes or contentions with the defendant Railroad Company as employer.

This is manifest by Mr. Torian's letter of August 5, 1926, copy of which is hereto attached as Exhibit 2; (b) as late as March 18, 1927, the defendant Railroad Company made a written agreement concerning seniority districts, as alleged on pages 19 and 20 of plaintiffs' petition. This appears from a copy of a signed agreement with reference thereto, hereto attached and marked Exhibit 3.

Affiant further says that the plaintiff Brotherhood and its officers and those in charge of its activities have attempted to be fair and reasonable in its and
401 their negotiations and relations with the defendant Railroad Company, and in this connection affiant says that the same organization of which plaintiff Brotherhood is a part, for a long time has been and still is dealing harmoniously with the officers and executives of a large majority of the Class 1 railroads of the entire United States and that for the most part very little, if any, friction or strife has occurred within recent years; and affiant says that neither said Brotherhood, nor its officers have been radical, made any unreasonable demands, or conducted themselves as acutely hostile to said Railroad Company, but that naturally the matters and things about which these parties negotiated were in their very nature subject to a rather wide difference of opinion.

Affiant further says that the position of Chief Clerk to Superintendent of a railroad (being the office held by C. W. Derrington at Houston and F. C. Ehlinger at Ennis) in truth and in fact carries with it duties, powers and authorities ordinarily exercised by officials of a railroad company. In this connection affiant says that the men holding these offices are authorized to, and in fact do, sign superintendents' names to official

letters and act and use their judgment and discretion with respect to the operation and conduct of a railroad company's business—particularly in the absence of the Superintendent under whom they are empowered and generally have and enjoy powers, privileges and prerogatives ordinarily regarded in railroad circles as official in character; that the men filling these offices and positions have never been governed or con-
402 trolled by the agreements and contracts between employer and employee, nor could or would any of such men ever join or attempt to join the Clerks' Union (plaintiff Brotherhood); that the salaries paid to men in these positions are greatly in excess of those paid to the highest paid clerk or clerical employee governed by the contracts and agreements referred to and that in the two instances referred to (C. W. Derrington and F. C. Ehlinger) these men receive approximately one hundred dollars per month more than the highest paid clerical employee governed by the contracts referred to and about two and a half times as much as the average pay of such clerical employees governed by said contracts; that in truth and in fact these men in these positions have and exercise the authority to employ and discharge such employees as the general run of clerical employees referred to in plaintiffs' petition and that in any event their personal and confidential relations with the Superintendents under whom they are chief clerks are of such a nature that such superintendents would readily enforce and sustain any acts or conduct by their said chief clerks.

Affiant further says that the general statements with respect to Superintendents apply with equal force to the chief clerk of the Englewood office held by Mr. J. C. McDaniel and that in this instance there are

some 55 to 60 clerks employed under the direct supervision and control of the said J. C. McDaniel and he (the said McDaniel) has and exercises full supervision and control over each and all of said employees including the right to employ or discharge any of
403 them, to advance or promote them, to regulate their pay by assignment to different jobs, the time at which they may have their vacations, if any, as provided for by said contracts, and generally the said McDaniel has and exercises the same power and control over said 55 or 60 clerical employees as ordinary employer would over ordinary employees working under him.

Affiant further says that on Monday, June 20, 1927, he was in the local office of the defendant Railroad Company at Dallas, Texas, and there saw and conversed with Mr. B. S. Hollimon, Superintendent of the Dallas Division of the defendant Railroad Company—said conversation being with respect to the activities of the "Company Union" of clerical employees; and that during this conversation Mr. Hollimon stated in substance that if I (Harper) thought the Railroad Company would be prevented by law from organizing their employees into what I had called a "Rump Union", that I (Harper) was wrong, and that for my information he (Superintendent Hollimon) had visited other stations on his division of the defendant Railroad Company for the purpose of organizing such "Company Unions" and persuading and influencing the employees to join such "Company Union" which he (Hollimon) called "Clerical Employees' Association," and that he was in Dallas for the same purpose and did not care if I (Harper)

knew that he personally was promoting and organizing the "Clerical Employees' Unions" on his division (referring to the Dallas Division of the Defendant Railroad Company.)

Exhibit No. 1, referred to in above affidavit of H. W. Harper:

404 EXHIBIT No. 1.

Morgan's Louisiana and Texas Railroad & Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston & Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.
J. H. R. Parsons,
Vice-President & General Manager,
Louisiana Lines.
J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, June 21, 1923.

Ballot to Determine Representation Clerical Employees, Other Than General Office Employees.

Mr. Ralph J. King,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

Referring to conference of June 19th in regard to the above named matter.

In the spreading of the secret ballot to determine the wishes of a majority of the clerical employees as to whom they desire to represent them in negotiations with the Management, you took the position that the 110 employees who are classified as Personal Office Force were not entitled to vote in this proceeding, contending that they were not subject to the rules and it would, therefore, be improper to permit them to vote. Inasmuch as these employees are not subject to the rules and to representation by your organization, the
405 Company agreed with your contention that it would be proper to exclude the entire 110.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

JGT-s

Exhibit No. 2, referred to in above affidavit of H. W. Harper:

EXHIBIT No. 2.

Texas and New Orleans Railroad Company.

Houston, Texas, August 5, 1926.

Railway Labor Act.

Mr. H. W. Harper,
General Chairman, B. R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

We have given careful consideration to your letter of June 8th, in which you submitted, pursuant to instructions from your Grand Lodge, a proposal to establish a Regional Adjustment Board to handle disputes with employees represented by the following organizations:

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees,
Brotherhood of Maintenance of Way Employees,
Brotherhood of Railway Signalmen of America.

and we cannot agree that your proposal would satisfactorily take care of the situation insofar as the Southern Pacific Lines in Texas and Louisiana are concerned.

It would be a mistake to have one Board to
406 take care of different classes of employees whose work and working conditions are not similar and it is our opinion that the situation on these lines can best be taken care of by the establishment of a System Board of Adjustment under privisions of Section 3 of the Railway Labor Act for the employees coming under

the schedule in effect for the clerical and station employees on these Lines. We, therefore, propose the establishment of such a System Board, composed of two representatives of the Management and two representatives of the employees to handle questions in dispute which are not disposed of in conferences between the Company and the representatives of the employees. We are ready to meet with you in order to arrange for the formation of such a Board.

Yours truly,

(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

Exhibit No. 3, referred to in above affidavit of H. W. Harper:

EXHIBIT No. 3.

Memorandum of Agreement Covering Changes in Seniority Districts—Clerical and Station Service Employees, Houston, Victoria and Terminals Divisions.

Preamble.

Effective March 20, 1927, the mileage between Victoria and Kennedy via Cuero, which is now a part of the Victoria Division, will become a part of the Houston Division and the line from West Junction to Galveston,
which is now a part of the Houston Division,
407 will become a part of the Terminals Division.

In order to take care of this change in seriority districts, the following is agreed to:

Article 1.

Effective March 20, 1927, the line from Victoria (M. P. 28) to Kennedy (M. P. 175) via Cuero will be made a part of the senority roster of the Houston Division, for the classes of employees covered by the Clerks' rules of July 1, 1922, and May 16, 1924. These classes of employees now assigned to this district will be given until May 1, 1927, to exercise the option of transferring with their present senority date to the Houston Division seniority rosters or of remaining on the Victoria Division seniority roster. If they elect to remain on the Victoria Division seniority roster, they will, for a period of six months be exempt from displacement on seniority basis by the Houston Division employees on the same classification. This six months period to apply only to the present occupants of the positions and not to any employees who may hereafter be assigned.

Article 2.

Effective March 20, 1927, the line between West Junction (M. P. 12.66) and Galveston will be made a part of the Terminals Division seniority roster and the positions of the classes of employees covered by the Clerks' rules of July 1, 1922, and of May 16, 1924, on this territory will be made a part of the Terminals Division seniority lists. These classes of employees now assigned to this District (other than those on the separate roster for Galveston freight station) will be given until May 1, 1927, to exercise the option of
408 transferring with their present seniority date to the Terminals Division seniority roster, or of remaining on the Houston Division seniority roster. If

they elect to remain on the Houston Division seniority roster they will, for a period of six months, be exempt from displacement on seniority basis by Terminals Division employees of the same classification. This six months period to apply only to the present occupants of the positions and not to any employees who may hereafter be assigned. The Galveston Freight Station will be continued as a separate seniority roster and will be made a part of the seniority roster of the Terminals Division.

Signed at Houston, Texas, this 18th day of March, 1927.

For the Employees:
H. W. HARPER,
General Chairman, B. or R. C.

For the Railroad:
J. G. TORIAN,
Ass't. to V. P. & G. M.

Morgan's Louisiana Railroad and Steamship Company,
Louisiana Western Railroad Company,
Iberia and Vermilion Railroad Company,
The Galveston, Harrisburg and San Antonio Railway Company,
Texas and New Orleans Railroad Company,
Houston & Texas Central Railroad Company,
The Houston, East and West Texas Railway Company,
Houston and Shreveport Railroad Company,
Southern Pacific Terminal Company,
The Direct Navigation Company.

Houston, Texas, March 14, 1927.

Rearrangement of Mileage, Houston and Victoria Divisions and Establishment of Operating Division Designated as "Terminals Division."

Mr. H. W. Harper,
General Chairman, B. R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Effective March 20, 1927, the mileage be-
409 tween Victoria and Kennedy via Cuero which is now a part of the Victoria Operating Division will be made a part of the Houston Operating Division and the line from West Junction to Galveston which is now a part of the Houston Operating Division will be placed under the jurisdiction of Superintendent O'Donnell and designated as "Terminals Division."

Would like to discuss with you the question of seniority of employees on the districts named above who come within the scope of the Clerks' Schedule and will name 10 a. m., Friday, March 18th, for this purpose.

Kindly let me have acknowledgment.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

Complainants then introduced in evidence the affidavit of John W. Walker, made July 28, 1927, and the documents therein referred to, as follows:

I am a resident of San Antonio, Texas, and was employed as a clerk by the defendant Railroad Company for about ten years. About May, 1925, I was given a leave of absence by the railroad company on account of

my selection by the members of the Clerks' Union to represent them with respect to various matters relating to wages, hours, working conditions, etc. Since that time I have held the position referred to and am personally acquainted with the matters and things referred to in plaintiff's petition in this suit. I have
410 read the affidavit of H. W. Harper, dated July 28, 1927, and of my knowledge can assert the truth and accuracy of all the matters and things therein contained except the concluding paragraph of Mr. Harper's affidavit with respect to a conversation between him and Mr. Hollimon at Dallas.

In addition to the contents of Mr. Harper's affidavit, will say that C. W. Derrington acted for and on behalf of the railroad company in negotiations in May, 1925, relating to the assignment of various clerical employees to different positions brought about by the consolidation of the then Southern Pacific Lines with the S. A. & A. P. Railroad Company. In this connection will say that all clerical positions on the S. A. & A. P. Railroad at points where that railroad touches the lines of the Southern Pacific Railroad, were abolished and it became necessary to work out and adjust the assignment of all of the then employees of the S. A. & A. P. Railroad to other positions on the Southern Pacific Lines as consolidated with the S. A. & A. P. Railroad. In this connection will say that there were a large number of readjustments of positions and duties made necessary by this consolidation and with respect to those in the local office of the Southern Pacific the details concerning each and all of these great number of men were worked out between Mr. O'Donnell, the Superintendent, Mr. J. A. Sanders, the Agent, C. E. Armstrong, Assistant Agent and C. W. Derrington, Chief Clerk to

the Superintendent—all acting for and on behalf of the railroad company on the one hand and Mr. H. W. Harper and myself acting for and on behalf of the clerical employees on the other hand. This work consumed about two days, immediately following which
411 we undertook the same kind of readjustment with respect to about 55 or 60 yard office employees. In connection with this latter work, Mr. Harper and myself represented the clerks and Mr. C. W. Derrington and Mr. J. C. McDaniel alone represented the railroad company and in a general way the same matters were involved and the same results accomplished in these latter negotiations and dealings where Messrs. Derrington and McDaniel acted for and represented the railroad company as had been accomplished when the superintendent and agent had acted along with their assistance with respect to the local office employees.

Affiant further says that during the summer or fall of 1926 (the exact date of which he does not recall) he called at the office of Mr. Hollimon, Superintendent of the Dallas Division at Ennis, for the purpose of handling a grievance of a clerk employed in the local freight office at Ennis by the name of Rasco. This grievance related to some overtime and assignment of hours and was being handled by affiant on behalf of the clerk by reason of the clerk's membership in the Clerk's Union with which affiant was engaged. Upon this occasion affiant found that Mr. Hollimon was not in his office and the matter was taken up, discussed, negotiated and settled between affiant, representing the clerk, Rasco, and Mr. Ehlinger, acting for and representing the railroad company and at no time was this matter discussed between affiant and Mr. Hollimon.

Affiant further says that during the period since June 10, 1927, there has been circulated and distributed among the clerical employees of the defendant
412 railroad company certain written authorizations in substance authorizing the plaintiff Brotherhood to act for and represent such clerical employees who signed the same in connection with the pending wage dispute. In this connection affiant says that there have been signed and delivered to the representatives of plaintiff Brotherhood approximately 1125 of such written authorizations, all of which are now in the possession and custody of affiant, and each and all of which were signed and delivered by said 1125 clerical employees freely and voluntarily by the parties whose names are affixed thereto, which original written authorizations are hereto appended and referred to.

The documents referred to in the above affidavit of John W. Walker were thereupon introduced in evidence by complainants. They are 1125 in number and are printed forms, identical with Exhibit No. 1 annexed to the affidavit of C. W. Derrington, made July 28, 1927, and above set out in this statement of the evidence. They are dated, filled out and signed by Clerical Employees of the defendant Texas and New Orleans Railroad Company.

413 DEFENDANT'S REBUTTAL EVIDENCE.

Defendants next introduced in evidence the affidavit of J. G. Torian, made July 28, 1927, as follows:

I have read copy of affidavit of H. W. Harper and John W. Walker, both dated July 28, 1927, in the above entitled and numbered cause.

It is a fact that the 1,853 clerical employees, referred to in my former affidavit, filed in this cause, include the approximately 110 employees constituting personal office force of such officers as division engineer, train master, master mechanic or their equal or superior in official rank. Said personal office force employees are in fact clerical employees whose rates of pay are regulated and adjusted in accordance with rates of pay of other clerical employees. They are selected from cerical employees in the service and may be transferred back to such original positions as ordinary clerical employees. Seniority rules, however, do not apply to them solely for the reason that on account of the confidential nature of their duties they are and, of necessity, must be selected for their personal qualifications and without regard to seniority.

As a matter of practice, however, such confidential employees do not ordinarily belong to labor organizations which are, in the opinion of the Railroad Company, hostile to it and to its business interests—this for obvious reasons.

With respect to arrangements stated in said affidavits as having been made otherwise than as required by decisions of the United States Railroad Labor Board:

These agreements merely extend and modify the
414 schedules or rules promulgated by the United States Railroad Labor Board and referred to in affiant's original affidavit.

The position of chief clerk to the Superintendent of Texas and New Orleans Railroad Company and the position of Chief Yard Clerk are purely and simply clerical positions. Said chief clerks exercise no authority whatsoever by virtue of their positions outside their immediate offices and within their immediate offices

their powers are limited to distribution and supervision of the work. They have not the power to employ and discharge without the approval of the Superintendent. They sometimes, however, act in routine matters in the name of the Superintendent and may act in other matters by his delegation.

Defendants next introduced in evidence the joint affidavit of F. C. Ehlinger and C. W. Derrington, made July 28, 1927, and annexed to the foregoing affidavit of J. G. Torian, as follows:

We are familiar with the foregoing affidavit. The statements made therein with respect to the duties of Chief Clerks are correct.

Defendants next introduced in evidence the affidavit of C. W. Derrington, made July 28, 1927, as follows:

With respect to affidavit of John W. Walker filed herein and dealing particularly with certain negotiations at Houston growing out of taking over of the San Antonio and Aransas Pass Railway by Southern Pacific Lines and assignment of S. A. & A. P. employees: At the meeting atended by E. A. O'Donnell, Superintendent, J. A. Sanders, Agent, C. E. Armstrong, Assistant Agent, and myself, on behalf of the Railroad Company, I attended purely and simply as Superintent's Clerk, keeping a record of the proceedings.

With r[illegible] to the meeting dealing with similar employees at [illegible]glewood Yards: Only one of the clerical employees at the Englewood Yards was a member of the Brotherhood of Railway Clerks and no diffi-

culties whatsoever were anticipated. The matter was purely routine and at the meeting referred to in the affidavit I represented Mr. E. A. O'Donnell, Superintendent, and Mr. J. C. McDaniel represented the General Yardmaster.

What was to be done with respect to the Englewood Yards clerical employees was discussed at the meeting first referred to and it was understood that the meeting attended by Mr. McDaniel and myself alone would be merely a matter of form.

Defendants next introduced in evidence the affidavit of D. D. Wade, made July 28, 1927, as follows:

My name is D. D. Wade. I am a resident of the City of Houston, Harris County, Texas, where I have resided since September 8, 1923. I first entered the service of the Southern Pacific Lines, including Texas and New Orleans Railroad Company as extra clerk on inventory work on October 8, 1923, and continued at this work until October 17th, which I was transferred to the Division Engineer's office as roadmaster's clerk and acted in that capacity until November 1, 1924, at which time the Superintendent's office of The Houston, East and West Texas Railway Company was taken over by the Superintendent of Texas and New Or-
416 leans Railroad Company. Since that date I have been on the utility clerk's job in the Division Engineer's office and I am still on that job, but I am doing roadmaster's and building and bridges supervisor's clerk's work also. I have no employees under me and no directory or supervisory powers and no power to employ or discharge anyone.

I am a member of the Association of Clerical Employees, Southern Pacific Lines, and am also, by election, General Secretary and Treasurer of that organization.

I have been working with the Association since June 2, 1927, and since that date I have been vigorously and diligently soliciting members of the Association.

I joined the organization of my own free will and accord and I have been, and am, working to secure additional members of my own free will and accord and without the suggestion or direction from any officer or employee of the Texas and New Orleans Railroad Company or other Southern Pacific Lines as such.

I have talked with a great many of the clerical employees of said Company and I have never undertaken to intimidate, threaten or unduly influence any of such employees and I have never heard anyone claim that anyone else has undertaken to intimidate, threaten or unduly influence any of them to become a member of the Association.

Defendants next introduced in evidence the affidavit of E. A. O'Donnell, made July 28, 1927, as follows:

My name is E. A. O'Donnell and I am Superintendent, Terminals Division, Texas and New Orleans Railroad Company, residing at Houston, Texas.

417 The position of Chief Clerk to the Superintendent of Texas and New Orleans Railroad Company, which is held by C. W. Derrington in my office, and F. C. Ehlinger in the Office of Superintendent, Dallas Division, as well as the position of Chief Yard Clerk, Englewood Yards, which is held by J. C. McDaniel, are each and all purely and simply

clerical positions and the holder of none of these positions is in any sense an officer or official of the Texas and New Orleans Railroad Company. Said Chief Clerks exercise no authority whatsoever by virtue of their positions outside the immediate offices of their superiors and within the immediate offices of their superiors their powers are limited to distribution and supervision of work and making recommendations to the Superintendent with respect to matters handled in the office. They cannot employ or discharge men without the approval of the Superintendent.

They sometimes act in routine matters in the name of the immediate superior, the Superintendent, in the case of Superintendent's clerk, and the General Yardmaster as in the case of a General Yardmaster's clerk. They may act in other matters if delegated to do so.

C. W. Derrington acted in the matter referred to in his affidavit of this date at the meeting which I attended simply as Superintendent's clerk, making and keeping a record of the proceeding. Prior to the meeting to discuss the Englewood Yards situation, which was attended by Mr. Derrington and Mr. McDaniel alone, I told Mr. Derrington exactly what I wished done and he did exactly as I said. He acted as my
418 representative, as Mr. McDaniel acted as the representative of the General Yardmaster. Neither acted as representative of the Company.

Defendants next introduced in evidence the affidavit of F. C. Ehlinger, made July 28, 1927, as follows:

Referring to concluding portion of affidavit of H. W. Harper with respect to an alleged conversation between himself and Superintendent B. S. Hollimon at Dallas

on Monday, June 20, 1927: Mr. Hollimon is at present absent on vacation and it is very doubtful whether he can be reached or can come to Houston promptly. Mr. Hollimon, on his return to Ennis from Dallas, told me of his conversation with Mr. Harper and his statement of it is wholly different from the account given by Mr. Harper in his affidavit.

As a matter of fact, the work of securing members for the Association of Clerical Employees of the Southern Pacific Lines on the Dallas Division has been handled by me and under my direction as a member and officer of said organization without the assistance or suggestion of Mr. Hollimon. Mr. Hollimon has not secured any signatures or petitions himself and I have never requested him to act for or assist me in the matter.

419 Be it remembered, that upon the hearing of this cause on the Rule to Show Cause for Contempt of the Court as for violation of the temporary injunction, on the 5th and 23rd days of November, A. D. 1927, the following facts were adduced in evidence, to-wit:

Complainants then introduced in evidence the information or petition filed herein October 22, 1927, alleging contempt of Court by violating the temporary injunction heretofore issued herein, together with the affidavits and exhibits thereunto annexed, which said information or petition and the affidavits and exhibits aforesaid are hereby referred to and made a part hereof as fully as though the same were at length set forth herein.

DEFENDANTS' EVIDENCE IN CHIEF ON THE HEARING ON THE RULE TO SHOW CAUSE FOR CONTEMPT OF THE COURT AS FOR VIOLATION OF THE TEMPORARY INJUNCTION.

Defendants introduced in evidence their answer, under oath, to the information or petition aforesaid, filed herein on November 5, 1927, which said verified answer is hereby referred to and made a part hereof as fully as though the same were at length set forth herein.

Defendants introduced in evidence written authorizations or designations of representatives by clerical employees (other than general office employees) referred to and described in the answer last above referred to, the situatures being here omitted, as follows:

Englewood Yards, 5-26-27.

Mr. E. A. O'Donnell,
Supt. Terminals,
Houston, Texas.

Dear Sir:

We, the undersigned clerks, in Englewood
420 Yard Office, do hereby authorize the following committee: Mr. J. C. McDaniel, Chief Clerk, Englewood, to negotiate with the Management of the Southern Pacific Company in regard to rates of pay and working conditions of the undersigned. We are not affiliated with any labor organization and hereby grant complete authority to handle that part of our business in regard to the hours of service, rates of pay and working conditions to said committee.

Galveston, Texas, 7-25-1927.

We, the undersigned clerical employees of the Terminals Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as "The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana" and do hereby petition the management of these Lines to permit us to take steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the management through this proposed organization. We do hereby authorize Mr. J. C. McDaniels to represent us.

We, the undersigned clerical employees of the Terminals Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as

"The Association of Clerical Employes—South-
421 ern Pacific Lines in Texas and Louisiana" and

do hereby petition the management of these lines to permit us to take such steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the Management through this proposed organization. We desire Mr. J. C. McDaniels as our local representative.

Houston, Texas, July 7th, 1927.

We, the undersigned clerical employees of the Creosote Works, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as "The

Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana" and do hereby petition the Management of these lines to permit us to take such steps as necessary in the formation of this organization through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the Management through this proposed Organization.

LaFayette Division, June 24, 1927.

The undersigned clerical and station employees employed on the Southern Pacific Lines in Louisiana submit this as their declaration that they do not desire to be represented by the Brotherhood of Railway and Steamship Clerks' organization. It is our desire to select a committee of our own choice to handle our affairs and to deal direct with the management through such committee. Mr. H. V. Mielly is hereby desig-
422 nated as our representative for the further handling of this matter.

LaFayette, La.

The undersigned clerical employee of the Southern Pacific Lines in Texas and Louisiana does not desire the Brotherhood Railway Clerks to represent him. It is my desire that I be represented by the Association of Clerical Employees and deal with the Management on wage and working conditions through their committee.

Lafayette Division, June 28, 1927.

The undersigned clerical and station employees employed on the Southern Pacific Lines in Louisiana submit this as their declaration that they do not desire to be represented by the Brotherhood of Railway and

Steamship Clerks' organization. It is our desire to select a committee of our own choice to handle our affairs and to deal direct with the management through such committee. Mr.....is hereby designated as our representative for further handling of this matter.

Southern Pacific Lines, Texas and Louisiana,
Dallas Division.

We, the undersigned, clerical and station employees in the service of the Southern Pacific Lines in Texas, Dallas Division, do not desire the Organization of the Brotherhood of Railway and Steamship Clerks to represent us. We desire to select our own committee and deal with our management through such a committee.

Name. Position. Location. Date. Name of Representative.

423 Houston, 8/4/27.
The undersigned Clerical Employee of the Southern Pacific Lines in Texas and Louisiana does not desire the Brotherhood of Railway Clerks to represent him. It is my desire that I be represented by the Association of Clerical Employees and deal with the Management on wage and working conditions through their committee.

We, the undersigned clerical employees at Houston General Shops, herewith petition Mr. G. E. Garrett and delegate to him full authority to negotiate with the Management of these Lines, for an increase in rate of pay:

Name. Occupation. Department.

We, the undersigned Clerical Employees at Houston General Stores, herewith petition Mr. W. C. Biddle and delegate to him full authority to negotiate with the management of these Lines for an increased rate of pay.

....., Texas, July....., 1927.

We, the undersigned Clerks on the Austin Division of the T. & N. O. Railroad, desire to negotiate with the Management direct for an Association of Clerks and hereby state that we do not want the Brotherhood of Railway Clerks to represent us in the proposed wage controversy and any authority heretofore given them to represent us is now withdrawn.

June....., 1927.

We, the undersigned clerical and station service employees employed on the Southern Pacific Lines
424 in Texas and Louisiana, Austin Division, hereby declare that we do not wish to be represented by the Organization of the Brotherhood of Railway and Steamship Clerks, it being our desire to select our own Committee to handle our affairs and deal direct with the Management through such committee. We hereby designate Mr..... as our representative for the further handling of this matter.

We, the undersigned clerical and station employees in the service of the Southern Pacific Lines in Texas, Victoria Division, do not desire the organization of the Brotherhood of Railway and Steamship Clerks to represent us. We desire to select our own committee and deal with our Management through such committee.

July....., 1927.

The undersigned clerical and station service employees are employed on the Southern Pacific Lines in Texas and Louisiana, Houston Division, and we hereby submit this as our declaration that we do not wish to be represented by the organization of the Brotherhood of Railway and Steamship Clerks. It is our desire to select a committee of our own choice to handle our affairs and we desire to deal direct with the Management through such committee. We hereby designate Mr. H. J. Genard as our representative for further handling of this matter.

June 30, 1927.

The undersigned clerical and station service employees are employed on the Southern Pacific Lines in Texas and Louisiana, Ykm Shop & Store Division, and we hereby submit this as our declaration that we
425 do not wish to be represented by the organization of the Brotherhood of Railway and Steamship Clerks. It is our desire to select a committee of our own choice to handle our affairs and we desire to deal direct with the management through such committee. We hereby designate Mr. W. J. Ehrhardt as our representative for further handling of this matter.

New Orleans, La., June....., 1927.

The undersigned clerical and station employees employed on the Southern Pacific Lines in Louisiana submit this on their declaration that they do not desire to be represented by the Brotherhood of Railway and Steamship Clerks' organization. It is our desire to select a committee of our own choice to handle our affairs and to deal direct with the management through

such committee. Mr. J. G. Fernon is hereby designated as our representative for the further handling of this matter.

6-24-27, Texas, Houston, 1927.

We, the undersigned clerical employees of the Beaumont Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as "The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana" and do hereby petition the management of these Lines to permit us to take such steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the management through this proposed
426 organization. We do hereby authorize Mr. P. H. Young to represent us.

Goose Creek, Texas, July 24, 1927.

We, the undersigned clerical employees of the Beaumont Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization known as "The Association of Clerical Employes—Southern Pacific Lines in Texas and Louisiana", and do hereby petition the management of these Lines to permit us to take such steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the management through this proposed organization. We do hereby authorize Mr. P. H. Young to represent us. This supersedes all previous petitions signed by me.

Station, Beaumont; Date, 8-5-27.

The undersigned clerical employee of the Southern Pacific Lines in Texas and Louisiana does not desire the Brotherhood of Railway Clerks to represent him. It is my desire that I be represented by the Association of Clerical Employees and deal with the management on wage and working conditions through their committee.

Dining Car Dept.

We, the undersigned clerical employees of the Beaumont Division, Texas and New Orleans Railroad Company, after careful forethought and consideration, are desirous of reviving the former organization
427 known as "The Association of Clerical Employees—Southern Pacific Lines in Texas and Louisiana", and do hereby petition the management of these Lines to permit us to take such steps as necessary in the formation of this organization and our subsequent representation through its officers instead of the Brotherhood of Railway Clerks. There are certain matters we prefer to handle with the management through this proposed organization. We do hereby authorize

June....., 1927.

We, the undersigned clerical and station service employees employed on the Southern Pacific Lines in Texas and Louisiana, El Paso Division, hereby declare that we do not wish to be represented by the Organization of the Brotherhood of Railway and Steamship Clerks, it being our desire to select our own committee to handle our affairs and deal direct with the management through such committee. We hereby designate Mr. Dave Harper as our representative for the further handling of this matter.

Defendants next introduced in evidence report of J. L. Sexton, Deputy Clerk of the Court, appointed by the Court to count the signatures attached to said documents, as follows:

To the Honorable J. C. Hutcheson, Jr., Judge of said Court:

Now comes J. L. Sexton, Deputy Clerk, U. S. Court, appointed by this Court on November 5, 1927, to count the signatures attached to the documents submitted by the defendant, Texas and New Orleans Railroad Company as authorizations to Association of Clerical Employees to represent the clerical employees in the employ of the Southern Pacific Lines in Texas and
428 Louisiana, and respectfully reports that he did, on November 5, 1927, count the signatures appearing upon said documents and found that there were 937 such signatures.

The documents submitted consisted of 135 sheets.

J. L. SEXTON,
Deputy Clerk, U. S. Court,
Southern District of Texas.

COMPLAINANTS' REBUTTAL EVIDENCE ON THE HEARING ON RULE TO SHOW CAUSE FOR CONTEMPT OF THE COURT AS FOR VIOLATION OF THE TEMPORARY INJUNCTION.

Complainants introduced in evidence affidavit or pleading of H. W. Harper concerning the authorizations introduced in evidence by defendants, filed November 21, 1927, together with the statements and exhibits attached thereto, which said affidavit or pleading and the statements and exhibits aforesaid are hereby referred to and made a part hereof as fully as though the same were at length set forth herein.

Complainants next introduced in evidence the following letter signed by the Superintendent of Terminals of Texas and New Orleans Railroad Company:

Rate of Pay—Auto Industry Clerk—Englewood Yard.

Houston, Texas, February 26, 1925.

Mr. H. W. Harper, General Chairman,
Brotherhood of Railway and Steamship Clerks,
San Antonio, Texas.

Dear Sir:

Yours of the 19th, above subject.

Wish to advise that position of this class does not come within the scope of the working rules, as
429 the occupant of the position must have an automobile and an allowance for the use and upkeep of same is a part of the monthly rate that is paid.

Yours truly,
(Signed) E. A. O'DONNELL.

Complainants next introduced in evidence copy of letter of November 4, 1925, from Vice-President and General Manager of the Texas and New Orleans Railroad Company, to L. M. Parker Secretary, United States Railroad Labor Board, as follows:

Houston, Texas, November 4, 1925.

Claim of the Committee of the Organization of Brotherhood of Railway and Steamship Clerks that the employees in Houston Terminals who are designated as Automobile Industry Clerks should be paid a daily rate instead of the present monthly rates that includes the furnishing and upkeep of an automobile that is necessary for them to use in order to cover their assigned territory daily.

Mr. L. M. Parker, Secty.,
United States Railroad Labor Board,
Transportation Building,
Chicago, Illinois.

Dear Sir:

We wish to acknowledge receipt of your MC 20.1821 of October 20th, enclosing copy of ex-parte statement filed by the Organization of the Brotherhood of Railway and Steamship Clerks in the above case. In this connection, I am enclosing the required number of copies of statement giving the position of the carrier and wish to say that it is our desire to appear and offer oral testimony when the case comes up for hearing.

Yours truly,
(Signed) G. S. WAID.

430 Complainants next introduced in evidence extract from statement enclosed with and referred to in the foregoing letter, as follows:

Southern Pacific Lines in Texas and Louisiana
and
Brotherhood of Railway and Steamship Clerks.

Claim of the Committee of the Organization of Brotherhood of Railway and Steamship Clerks that the employees in Houston Terminals who are designated as Automobile Industry Clerks should be paid a daily rate instead of the present monthly rates that includes the furnishing and upkeep of an automobile that is necessary for them to use in order to cover their assigned territory daily.

Statement of Facts.

* * * *

The positions in question are entirely different to those of Clerks and do not come within the scope of clerical duties as defined in the clerks' schedule. These positions have been in existence and carried at monthly rate of pay for several years, and in order to be eligible to same the employee must be able to furnish an automobile and use it in his work.

Position of the Carrier.

The carrier holds that there is no basis for the claim filed in this case. The positions in question were established under the designation of "Automobile Industry Clerks", but are entirely different from clerical positions and are properly compensated at a monthly rate, which includes the furnishing and upkeep of an automobile. We desire to point out that the
431 monthly rates of pay have been in effect for several years and were in effect when the present schedule containing Rule 46, on which the Clerks' Organization base their claim was placed in effect on July 1, 1922. No objection to the monthly rate was offered at that time, or was ever offered by the former General Chairman of the Committee representing Clerks' Organization, the claim now presented being filed in February, 1925. The positions are regarded as preferred ones and the majority of the men originally assigned are still holding them, the only vacancies occurring for several years past having been where one employee was promoted and in another case where the employee left the service. * * * *

For the Carrier:

(Signed) G. S. WAID,
Vice-President and General Manager.

Houston, Texas, November 4, 1925.

Complainants next introduced in evidence memorandum of conference, as follows:

Houston, Texas, June 15, 1923.

Memorandum of conference held beginning at 10:00 A. M. with Committee as follows:

Mr. Ralph J. King, General Chairman,
Mr. H. W. Harper, Vice-General Chairman,
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Mr. J. C. McDaniel, General Chairman,
Mr. H. L. Weatherford,
Mr. P. C. Bennett,
Committee Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

432 The purpose of this conference was to arrange for the spreading of a secret ballot in order to determine whether a majority of the clerical employees desired to be represented by the Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees or by the Committee of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

Mutual agreement was reached on the form of ballot, the letter of instructions to accompany same and the method of spreading, returning and canvassing the ballot but there was a disagreement on the question of what employees would be entitled to vote in this election.

The Brotherhood of Railway and Steamship Clerks took the position that the employees who are classified as personal office force should not be permitted to vote as they are not subject to the working rules and other provisions of the Clerks' Agreement. The Committee of the Association of Clerical Employees took the position that the employees classified as personal office force should be permitted to voted in this election as they would be vitally concerned in the outcome and their wage scales have been determined by the Wage Orders of the United States Railroad Labor Board and they are therefore, to this extent, directly interested in the question of representation.

There was a failure to reach an agreement in regard to this dispute and it was suggested that progress might be made by spreading the ballot and segregating the ballots of the personal office force and that in the meanwhile this matter might be referred to the
433 United States Railroad Labor Board for a ruling and that the counting or throwing out of the ballots of the personal office force would be dependent upon whatever ruling the Labor Board might give.

The personal office force on these Lines, as shown by submission filed with the United States Railroad Labor Board by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees under date of May 21, 1923, was as follows:

Employees who are considered by the Organization to be properly entitled to the classification of personal office force	42
Employees who are classified as personal office force but whose classification is excluded by the Brotherhood of Railway and Steamship Clerks	68
Total	110

The Committee representing the Brotherhood of Railway and Steamship Clerks expressed willingness to permit the 110 employees classified as personal office force to vote in this election providing it were agreed that in case the result of the election was in favor of the Brotherhood of Railway and Steamship Clerks the present classification of personal office force would be abolished and these employees would come under the general rules and working conditions governing other clerical employees.

The representative of the Management declined to be a party to any such agreement, taking the position that the dispute was between the Committee of the Brotherhood of Railway and Steamship Clerks and the Committee of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana and that such an agreement would be entirely improper as the railroad company is not properly a party to this dispute.

434

In order to expedite the spreading of the ballot and to avoid unnecessary delay it is agreed that ballots may be sent to the personal office force and duly returned by them but that the counting of such ballots or throw-

ing out of same will be contingent upon the ruling that the United States Railroad Labor Board may give in this matter.

(Signed) J. C. McDANIEL,
General Chairman, Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

(Signed) RALPH J. KING,
General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Complainants next introduced in evidence copy of decision No. 829 (Docket 633) of the United States Railroad Labor Board—Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. Michigan Central Railroad Clerks' Association vs. Michigan Central Railroad Company—decided March 21, 1922, the only material part of which is as follows:

Clerical employees filling excepted positions whom the carrier is willing to include within the scope of the agreement to be negotiated with the organization representing a majority of the clerical employees, shall participate in the vote. Clerical employees filling excepted clerical positions who are not to be included within the scope of said agreement shall not participate in the vote.

435 Complainants next introduced in evidence copy of decision No. 1719 (Dockets 475-20-74) of the United States Railroad Labor Board—Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees vs. Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company, decided March 22, 1923, the only material part of which is as follows:

Decision.—The Railroad Labor Board decides that—

1. (a) Clerical employees filling excepted positions, whom the carrier is willing to include within the scope of the agreement to be negotiated with the organization representing a majority of the clerical employees shall participate in the vote. Clerical employees filling excepted positions who are not to be included within the scope of the agreement shall not participate in the vote. * * * *

(c) Employees filling the following positions shall participate in the vote:

Clerks, as defined in rule 2 of existing agreement;
Telephone switchboard operators;
Office boys;
Office messengers;
Train and engine crew callers;
Station helpers, and other employees filling similar positions who regularly devote not less than four hours per day to clerical work;
Employees engaged in assorting waybills and tickets, operating appliances or machines for perforating, addressing envelopes, numbering claims and other papers,

gathering and distributing mail, adjusting dictaphone cylinders, and performing other analogous office service, and

Any other employees who regularly devote not less than four hours per day to work of a celrical nature.

436 Complainants next introduced in evidence copy of decision No. 220 (Docket 405) of the United States Railroad Labor Board—Brotherhood of Railway and Steamship Clerks, Freight Handlers and Station Employees vs. Pennsylvania System—decided August 3, 1921, the only material part of which is as follows:

Opinion— * * * *

3. That the carrier was wrong in refusing to allow the name of any organization to go on the ballot. There is nothing in the Transportation Act to justify this course. Said statute recognizes the existence of organizations of railway employees, and the right of the men to belong to such organizations is no longer seriously questioned in any quarter.

The railway employees have built up organizations with their money, have put at the head of them the men they consider most competent and trustworthy, and have acquired a vast amount of information, statistical and general, bearing on matters affecting their rules and working conditions. It is unjust and unreasonable to seek by methods, direct or indirect, to deprive them of the efficient representation afforded by these organizations, provided, of course, a majority of them desire to be so represented.

On the other hand, if the carrier, by fair and legal methods, can win the support of a majority of its employees to non-union representation in this important statutory conference, it has the undoubted right to do so.

Putting the name of an organization on the ballot was equivalent to putting the names of in-
437 dividuals there, because it simply meant that the chosen officers of the organization would represent the employees, if the majority vote authorized.

4. Said organization of employees was wrong in its suggestion that the ballot contain only the names of organizations to the exclusion of individuals. This ignored the rights of non-union men, and was therefore unjust and unreasonable.

5. The insistence of the carrier that no name should go on the ballot save that of an employee of the carrier is not justified by the statute. The employees had no desire, however, so far as the record shows, to place on the ballot the name of any one not an employee. * * *

7. The carrier was correct in its contention that the employees embraced in the membership of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, constitute more than one distinct class of employees within the meaning of the Transportation Act.

The Labor Board holds that, under the Transportation Act, one distinct class of employees cannot negotiate rules for another distinct class. For example, the

laborers employed in and around stations, storehouses and warehouses have no right to participate in the election of representatives to negotiate rules for clerks, and vice versa, the clerks have no right to participate in the election of representatives to negotiate rules for said laborers.

The fact that these different and distinct classes of employees belong to the same organization does not affect the question under consideration. The or-
438 ganization may admit to its membership as many different classes of employees as it may see fit, but it cannot throw their combined vote and strength to the election of representatives to negotiate, under the Transportation Act, for any one distinct class of employees. The organization may be selected, however, to represent any class of employees that belong to it.

The Labor Board has heretofore held that, employees performing work similar in its general characteristics and in the conditions surrounding it belong to the same class, within the meaning of the statute. It now holds the converse of this proposition—namely, that employees performing work dissimilar in its general characteristics and in the conditions surrounding it must be assigned to different classes, within the meaning of the statute.

It is not always easy, however, to classify employees, for there are varying degrees of similarity and dissimilarity in their work and working conditions.

For the purpose of the proposed ballot, the Board holds that the employees in question are properly divided into the three following classes:

Group 1.

This group shall include all clerical forces in all departments, as defined in rule 4 of the National Agreement promulgated by the United States Railroad Administration, (excluding those that were considered as coming under the provisions of Section (b), Article I, of the National Agreement). This group shall
439 also include telephone switchboard operators, office boys, office messengers, office chore boys, and other employees filling similar positions in offices, employees engaged in assorting waybills and tickets, operating appliances or machines for perforating, addressing envelopes, numbering claims and other papers, gathering and distributing mail, adjusting dictaphone cylinders, and performing other analogous office service.

Group 2.

This group shall include station, storehouse, warehouse, and elevator foremen, and assistant foremen, and other foremen, supervising employees specified in Group 3, storekeepers (not including general storekeepers and assistant general storekeepers), excluding such employees as were considered as coming under the provisions of Section (b), Article I, of the National Agreement promulgated by the United States Railroad Administration.

Group 3.

This group shall include all office, station, warehouse, storehouse, and elevator forces (not included in groups 1 and 2) such as train announcers, gatemen, baggage and

parcel room employees, operators of station equipment devices (excluding those covered by agreement with telegraphers), elevator operators, office, station and warehouse watchmen and janitors, station, platform, warehouse, transfer, dock, pier, store room, stock room, and team track, freight handlers or truckers, or others similarly employed, sealers, scalers and freight and perishable inspectors, stowers and stevedores, callers or loaders, locaters or coopers, and all other similar or common labor in and around stations, store-
440 houses and warehouses.

8. * * * *

The misunderstanding which arose as to the proper method to adopt, for the selection of the representatives of the employees for the conference on rules deprived great numbers of employees, apparently a majority, of their legal right to be represented. This sort of a situation is not conducive to industrial peace. The carrier ought not to be content with it, because it is unjust and un-American. * * * *

The Board orders that another election be held to determine the choice of a majority of each of the three classes of employees above set out, as to their representatives in the negotiations of rules and working conditions.

* * * *

Complainants next introduced in evidence letter from J. G. Torian, Assistant to Vice-President and General Manager, Texas and New Orleans Railroad Company, to Ralph J. King, General Chairman, Brotherhood of Railway Clerks, etc., as follows:

Houston, Texas, June 21, 1923.

Ballot to Determine Representation Clerical Employees, Other Than General Office Employees.

Mr. Ralph J. King,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

Referring to conference of June 19th in re-
441 gard to the above named matter.

In the spreading of the secret ballot to determine the wishes of a majority of the clerical employees as to whom they desire to represent them in negotiations with the Management, you took the position that the 110 employees who are classified as Personal Office Force were not entitled to vote in this proceeding, contending that they were not subject to the rules and it would, therefore, be improper to permit them to vote. Inasmuch as these employees are not subject to the rules and to representation by your Organization, the Company agreed with your contention that it would be proper to exclude the entire 110.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

JGT-s

Complainants next introduced in evidence paragraph 3 (b) of Rule 1 of Article 1 of "Hours of service and working conditions governing employees herein named", in the "Rules covering all clerical and station employees except General Office forces", of Southern Pacific Lines

in Texas and Louisiana (Texas and New Orleans Railroad Company), effective July 1, 1922, being a portion of the same identical rules heretofore introduced in evidence by the defendants as Exhibit No. 1 appended to the affidavit of J. G. Torian.

Complainants next introduced in evidence
442 letter from B. S. Hollimon, Superintendent, Houston & Texas Central Railroad Company:

Circular No. 243.

Ennis, Texas, May 16th, 1924.

Agents,
Yardmasters,
Master Mechanic,
Car Foremen:

For your information and guidance I am attaching copy of Addendum No. 1 to Clerk's Schedule of Rules, effective July 1st, 1922, covering all clerical and station forces except General Office forces and employees classified in Personal Office Force.

The rules are clearly defined and there should be no misunderstanding as to their proper application. * * *

(Signed) B. S. HOLLIMON,
Superintendent.

Appended to said letter is a copy of Addendum No. 1 to Clerks' Schedule of Rules, effective July 1, 1922, identical with Exhibit No. 1 appended to and made a part of the affidavit of J. G. Torian hereinbefore set forth.

Complainants next introduced in evidence from transcript of the proceedings before the United States Railroad Labor Board, September, 1921, in Docket 687 of the said Board, being from statement of G. S. Waid in behalf of the carrier, as follows, to-wit:

The then Chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, did on June 2, 1921, pre-
443 sent "credentials signed by clerks, call boys, messenger boys, negro porters, freight handlers, janitors and outside employees, a great number of whom are not clerks at all by any stretch of the imagination, nor do they do any clerical work whatever, but he has sought to throw the blanket of his organization over all of these employees to show that he does represent a majority of the clerks on the line.

"Notwithstanding the heavy stretch of his rights in this particular, he was unable to do it even then, as out of a total of 2,866 employees, clerks on the system, with his padded authorities, filled up with negro truckers and all, he only had 1,353 employees who signed in favor of his representing them, and I want to say in that connection that a great many of these signatures were signed by one person and apparently not at all by the interested employees." * * *

"The confidential clerks are excluded from the agreement, yet they are given the same treatment as all other clerks and conversely all other clerks are given the same treatment as general office clerks.

"Mr. Wharton:

"I am not raising that question, but simply endeavoring to get a clear understanding of the number of clerks involved.

"Mr. Waid:
"The confidential clerks, Mr. Wharton, are not included in this count.

"Mr. Wharton:
"In this 1400?

"Mr. Waid:
"No, sir.

444 "Mr. Wharton:
"All right.

* * * *

"Mr. Phillips:
"On what basis were they divided? Just on the general classification of General Office clerks?

"Mr. Torian:
"General Office clerks; yes, sir. That did not include employees not making records. In determining for our own guidance what constituted clerical employees we limited that classification to those folks who make some character of record with the pencil, typewriter or pen."

Complainants next introduced in evidence copy of letter from Mr. Torian addressed to J. C. McDaniel and H. W. Harper, as follows:

Houston, Texas, November 14, 1923.

Representation Clerical Employees, Outside of General Office.

Mr. J. C. McDaniel,
General Chairman,
Association of Clerical Employees,
2024 Chestnut St., Houston, Texas.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building, San Antonio, Texas.

Gentlemen:

At conference yesterday I advised that the Carrier would comply with Decision No. 1971 of the United States Railroad Labor Board and recognize the Organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employees by secret ballot selected other representation, but that the carrier did not feel that the present minority representation of the Clerical Em-
445 ployees was fair to either the employees or the railroad. Out of the 1635 clerical employees in the service of these lines, outside of General Office, there were only 611 who voted to authorize the Brotherhood of Railway and Steamship Clerks to represent them. Expressed in percentages, this authorization constitutes only 37.37% of the employees directly interested, which cannot be termed anything but minority representation.

There can be nothing but unrest and general dissatisfaction so long as minority representation is in effect. The carrier is placed in a position where it has, on the

one hand, a demand from the representatives of the Organization of the Brotherhood of Railway and Steamship Clerks to recognize them as the representatives of all of the 1635 clerical employees, although it is a known fact that they do not, at this time, hold authority of a majority of the employees to represent them, whilst on the other hand, the Carrier has a protest from the representatives of the Association of Clerical Employees against the recognition of the Organization of the Brotherhood of Railway and Steamship Clerks, as the duly authorized representative of the 1635 clerical employees on these Lines, as the Association of Clerical Employees claim to hold definite authority from the majority of such employees.

These conditions can be overcome and harmonious relations established between the employees themselves, as well as with the carrier by the spreading of another ballot. The carrier, therefore, asks that in fairness to all concerned, you agree to the spreading of a
446 secret ballot which shall conform in all respects with the provisions of Decisions Nos. 218 and 220 rendered by the United States Railroad Labor Board. We request that you signify at the earliest possible time, your agreement to proceed with the spreading of another ballot, or advise in case of refusal to do so, as in the latter event the carrier will be under the necessity of referring this dispute to the United States Railroad Labor Board, under the provisions of the Transportation Act.

In this connection, I desire to invite your attention to Decision No. 2004 which was rendered by the United States Railroad Labor Board under date of November 2nd, 1923, and which covers a situation very similar to that which exists on these Lines.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

With the foregoing letter there was introduced in evidence that part of said Decision No. 1971 of the United States Railroad Labor Board herein deemed material, omitting statement of the facts and discussion, as follows, to-wit:

447 Decision.—The Railroad Labor Board decides that a majority of the legal votes cast in this election will determine who shall be the representative of the employees. The representatives of the parties to the dispute shall arrange a date for the counting of the ballots which shall be not later than October 4, 1923. In order that any charges of interference may be avoided as between the two clerical organizations, said ballot shall be delivered in Chicago on or before that date, where they shall be counted under the direct supervision of a representative of the Board.

Complainants next introduced in evidence letter from B. S. Hollimon, Superintendent, to Ralph J. King, then General Chairman of the Brotherhood of Railway and Steamship Clerks, etc., and seniority roster attached thereto and referred to therein, as follows:

Rules—Furnishing Seniority Rosters.

Ennis, Texas, Sept. 18th, 1922.

Mr. Ralph J. King,
319 Grayburg Building,
San Antonio, Texas.

Dear Sir:

Your letter of Sept. 9th, above subject.

448 I attach hereto another copy of senority roster of clerks at Ft. Worth freight station and yard clerks, showing positions held by the various employees.

Yours truly,
(Signed) B. S. HOLLIMON,
Superintendent.

Houston & Texas Central Railroad Company.
Office of the Superintendent.
Dallas Division.

Seniority Roster of Clerks—Ft. Worth Freight Agency, July 1st, 1922.

Name.	Seniority Date.
Belle Sutton, Exp. Bill Clerk	December 24, 1913
A. H. Hill, Claim Clerk	July 20, 1916
R. A. Hargraves, WH. Foreman	July 20, 1916
J. G. Tingle, Asst. Claim Clk.	March 1, 1918
J. H. Dinkins, Demurrage Clk.	March 1, 1920
T. G. Dyer, Rate Clerk	March 1, 1920
W. E. Gallaspy, Accountant	March 1, 1920
G. L. Grimes, Cashier	March 1, 1920
Mrs. L. Tatum, Steno.	March 1, 1920
Mrs. O. C. Mitchell, Asst. Bill Clk.	March 1, 1920
G. W. Menzing, Wh. Delivery	March 1, 1920
Oscar Malone, Receiving Clk.	March 1, 1920

R. E. L. Trantham, Messenger .....April 20, 1920
R. R. Alexander, Check Clerk .....June 21, 1920
Chas. R. Strong, Collector .....May 15, 1921
449 L. E. Parnell, Chief Bill Clk....May 15, 1921
Russell A. Kerr, Messenger. November 21, 1921

Appointive positions not subject to bid:

E. A. O'Donnell, Ch. Clerk .....September 6, 1920
G. B. Hogan, Asst. Agent .....May 15, 1921

* * * *

Complainants next introduced in evidence instruments identical in form with Exhibit No. 1 appended to the affidavit of C. W. Derrington, which has hereinbefore been set out, and bearing the signatures of 76 employees of Texas and New Orleans Railroad Company who had later signed authorizations in favor of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, hereinbefore set out, said instruments are printed forms introduced by complainants bearing dates later than those last above referred to.

Complainants next introduced in evidence instruments of retraction signed by 16 of above mentioned 76 clerical employees, all identical with the following copy of one of them, except as to place of execution, date, date of petition referred to, name and position of signer, and name of witness to same:

Jennings, La., July 5th, 1927.

Mr. H. W. Harper, Pres,
B. of R. R. & S. S. Clerks.

Dear Sir:

On or about May 16th, 1927, I signed some
450 kind of a petition, the purpose of which was to designate some one other than the Committee of the Brotherhood of Railway Clerks to represent me in matters of wages and working conditions. After giving this matter further consideration I desire to withdraw my name from that petition and to advise all concerned that I want the regular constituted Committee of the Brotherhood of Railway Clerks to continue to represent me in these matters.

Yours truly,
(Signed) FRANCIS R. CONNER,
Ticket Clerk.
Title of Position.
July 5, 1927.
Date.

Witness:
(Signed) W. D. C. GRAVELLES.

451 Complainants next introduced in evidence a letter from R. E. Stotzer to H. W. Harper, verified by affidavit of R. E. Stotzer, as follows:

Seguin, Texas, October 31st, 1927.

Mr. H. W. Harper, Gel. Chrman,
211 Moore Bldg.,
San Antonio, Texas.

Dear Sir:

Sunday night, Oct. 30th, 1927, about 8:30 P. M., I was notified at my home that the Agent, Mr. B. F. Moore, had received a railroad telegram stating that Clerk O'Connor from Gonzales would report for duty today, Oct. 31st, 1927, relieving me from service.

This morning I immediately called on Mr. B. F. Moore, Agent at Seguin, Texas, and asked him to explain, if possible, just why I had been relieved, as I had not asked for a leave of absence, and knew of no reason why I should be relieved from the service. Mr. Moore stated that he knew nothing further than the message he had received but that he would call Mr. F. H. Bednark, Asst. Supt. at San Antonio, and try to ascertain why I had been relieved.

He immediately called Mr. Bednark on the telephone and was advised that I had been relieved from the services and that he would receive a letter stating the full particulars in the case, I then asked him to ask Mr. Bednark if I could see him in his office at 10:00 A. M., this morning, which request was granted by Mr. Bednark.

I immediately left for San Antonio in my car and was admitted to Mr. Bednark's office about 10:45 A. M., after a few words of customary greeting I was
452 informed by Mr. Bednark that I had made a mistake by waybilling a car of watermelons which I had billed to Ft. Worth, Tex., instead of Wichita, Kans., and he further stated that it appeared that I had been let out of the service for this error, he then stated that he had another similar case but had not ascertained whether I had made this error or not. I remembered that I had made the second error also, I told Mr. Bednark that I had also made the second error.

Mr. Bednark then asked me why I had made these errors and I tried to explain to him that in the watermelon season we had been rushed and that I had done all the work I possibly could and in the rush I had made these errors, he then asked me if I was a family man and I stated that I was, I had a wife and one

child, he then asked me to wait a few minutes as he wished to tak to Mr. A. D. Mims, Supt.; however, Mr. Mims was not in the building at the time and he stated that I could wait until he returned if I wished. I stayed in Mr. Bednark's office until a few minutes after the noon hour and he then told me that he was going out to lunch, and that it appeared that I had been let out of the service for these errors.

In my conversation I asked Mr. Bednark if it was not out of the ordinary to let men out of the service on small accounts as these and I also stated to him that I had worked over eight years and this was the only error that he had ever held against me, as best as I could remember. I also asked him if there was not something further behind my dismissal, meaning the Dispute of the Brotherhood of Railway Clerks, which he denied.

453 In the course of our conversation Mr. Bednark asked me how the clerks at Seguin felt and if they were satisfied. His question not being clear as to just what he was referring to I asked him in just what manner he wanted to know if they were satisfied, he then stated that he was afraid to talk to me as I was the fellow that was instrumental in geting the Injunction against him. I admitted to him that I had previously made an affidavit in regard to his visit to Seguin in the interest of the Association of Railway Clerks.

The File indicated that the above mentioned errors were made on or about July 23rd and July 28th, 1927.

I have been an employee of the Southern Pacific Lines on the Houston Division since Oct. 16th, 1919, and, as stated above, this is the first error my record has been

charged with, with the exception of a reprimand which I received about 1920 or 1921, I do not remember the exact date.

Sincerely and Fraternally,
(Signed) R. E. STOTZER.

Before me, a Notary Public in and for County of Bexar and State of Texas, appeared R. E. Stotzer, known to me to be the person whose name is signed to the foregoing statement, who upon oath says the statements are true to the best of his knowledge and belief.

Signed at San Antonio, Bexar County, Texas, this 31st day of October, 1927.

(Signed) B. KUCHENBAKER,
(Seal) Notary Public.

454 Complainants next introduced in evidence the affidavit of L. H. Sandel, dated November 1, 1927, as follows:

My name is L. H. Sandel. I am employed as an Order Clerk in the Yard Office of the Texas & New Orleans Railway Company, located at Galveston, Texas. I have been employed in that office continually since December 28, 1927.

On October 28, 1927, Mr. Derringer, Chief Clerk to Mr. O'Donnel, Superintendent of the Texas and New Orleans Railway Company, and another clerk by the name of Davis came to the Yard Office and while I was on duty, engaged me in conversation for the obvious purpose of inducing me to renounce my membership in the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and

join the Clerical Association. During the course of our conversation Mr. Derringer stated that, meaning the Clerical Association, "We all know that the company (T. & N. O. Ry.) will not recognize the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, but would recognize the Clerical Association."

He stated further that he understood that I had bid on a position in the local freight office, which I did, and which assignment had not yet been filled. He said that he did not know what the outcome would be, but that he did know that Agent C. P. Kennedy of the T. & N. O. Ry. at Galveston, Texas, was wrapped up in the Clerical Association with body and soul. Mr. Kennedy makes all assignments at the Local Freight Office. He then asked me if some employee with equal
455 rights, who was a member of the Clerical Association were to bid against me, if I did not think that the other employee would get the position.

I then stated, that as I understood from him, that unless I joined the Clerical Association I would not get the position. He replied that he did not want me to take it that way, as he just wanted to lay things before me and that he was only using that as an illustration.

(Signed) L. H. SANDEL.

Subscribed and sworn to before me, this 1st day of November, 1927.

(Signed) A. R. GOLLBERG,
Notary Public, in and for
Galveston County, Texas.

Complainants next introduced in evidence the affidavit of B. G. HUDSON, dated November 4, 7927, as follows:

At the time that J. C. McDaniels, Chief Clerk in the Englewood Freight Yards of the T. & N. O. Railroad Company at Houston, approached me on October 14, 1927, concerning my joining the Association of Clerical Employes, as referred to in a former affidavit by me, sworn to on October 17, 1927, and filed in the office of the Clerk of this Court on October 22, 1927, I told him that if the T. & N. O. Railroad Company let me out if I did not join the "Association," I could get plenty of other positions.

On the evening of October 26, 1927, J. A. Sanders, Local Freight Agent of the T. & N. O. Railroad Company called me into his office and told me to re-
456 port to him at 8 o'clock the next morning as he had instructions from Superintendent E. A. O'Donnell for both of us to report to his office in the Grand Central Depot at that time. On the morning of October 27, 1927, I reported to the office of the superintendent as instructed and he informed me that I was charged with obtaining passes for my mother under false pretences. I told Mr. O'Donnell that the application blank which I had filled out in May, 1927, for the pass for my mother was the first such blank that I had ever filled out and that I did not know that every question asked thereon had to be filled out technically or absolutely correct and that after my attention was called to the fact that I had not correctly answered a question on the blank I had returned the pass unused and requested that my application for the pass be canceled. I told him that I had no intention of misrepresenting the facts. One of the questions on the blank was, "Is person entirely dependent on you for support?" I answered this question "Yes" although my mother was not entirely dependent on me for support, she being only partially so.

I would have had to pay her railroad fare from Laurel, Mississippi, to Houston to visit me if I had not obtained a pass for her. I had been advised that under such circumstances it was the practice to answer the aforesaid question "Yes" and that passes were customarily issued under such circumstances. Mr. O'Donnell further asked me if I did not have plenty of other positions awaiting me if I was let out of the Texas & New Orleans Railroad Company. I answered that I did not then have one positively awaiting me. In reply he stated:

457 "I thought you had plenty of places to work."

Mr. O'Donnell then said that he would give me a chance to resign or he was going to discharge me. I asked him to give me until the next day to make up my mind. On the following day I told him that I did not feel that I had committed any offense and would not resign. He then said that I was discharged. I then requested of Mr. O'Donnell that he grant me a hearing before he discharged me. He asked me who I would want to represent me at such hearing. I first named H. W. Harper, General Chairman of the Brotherhood of Railway Clerks and Mr. O'Donnell, appearing to become very angry said that that man (meaning Harper) does not work for the T. & N. O. Railroad Co. now. I then named John W. Walker, General Secretary of the Brotherhood and Mr. O'Donnell stated that Walker no longer worked for the railroad. I then named C. A. Brandin, Local Chairman of the Brotherhood, who is at present O. S. & D. Clerk in Houston local freight office of the T. & N. O. RR. Co. Mr. O'Donnell then said, "You mean you want BRofC representation?" I answered "Yes, sir." He then stated, "Don't you know there is no BR of C on this road?" I said that I had been informed by Mr. J. C. McDaniels about two weeks ago that there was

not any B R of C and that unless I joined the "association" I would not be in the service much longer, but that I had not paid very much attention to McDaniel's remarks. O'Donnell replied, "That is just it." I construed this to mean that if I had paid attention to MsDaniels and joined the "Association" I would not have been discharged. It was clear to me from O'Donnell's remarks about his understanding that I had plenty of
458 positions awaiting me if I was let out of the T. & N. O. Railroad Company, that McDaniels had reported to him my refusal to join the "Association" and my remarks made to Mr. McDaniels at that time. No hearing was granted me and I was discharged.

Complainants next introduced in evidence the affidavit of CHARLES GINSBURG, dated November 3, 1927, as follows:

On October 5, 1927, and for some time prior thereto, I was "personal injury clerk" in the T. & N. O. Railroad Company's shops, Houston, Texas, and have been in the employ of said railroad company since September, 1920.

J. T. Conner is superintendent of the shops. I worked under the immediate supervision and direction of A. G. Baker, shop accountant, who while a subordinate to Conner, has a separate office force of about 25 men which he directs and supervises. Baker is Vice-Chairman of the "Association of Clerical Employes."

On the morning of October 4, 1927, I met Edgar Garrett, Local Chairman of the Association who told me that if I did not join the "Association" I would be fired that day.

Later the same day, October 4, 1927, I went to H. Derr, head clerk, assistant to Baker, Baker being absent and asked leave to be a little late in getting back from lunch hour as I was suffering from a tooth-ache and had an appointment with the dentist. Derr refused and as I was suffering a great deal with my tooth
459 and thought that I could make it back anyway within my lunch hour, I went to the dentist despite Derr's refusal. I got back 15 minutes late. On the following day, about 4 P. M., I was called into Mr. Baker's office, no one being present except Baker, myself and Baker's stenographer. Baker asked me about what had happened the previous day. Realizing that I was being tried, I asked to have my representatives present. Baker asked me who my representatives were and I told him H. W. Harper, General Chairman of the Brotherhood of Railway Clerks, and C. A. Brandin, Division Chairman, B. of R. C., were my representatives. Baker then stated that these men no longer represented the clerical employes on the S. P. Lines in Texas and Louisiana and would not be permitted to represent me. This hearing occurred about 4 P. M. and before 5 P. M. Baker again called me into his office and had me sign the minutes of the hearing before him which had been written up by his stenographer and immediately thereafter told me that I was fired.

Complainants next introduced in evidence the affidavit of D. L. Bartee, dated October 17, 1927, as follows:

On or about September 16, 1927, we received a circular letter dated August 31, 1927, addressed by The Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, to the Clerical Employees, South-

ern Pacific Lines in Texas and Louisiana, which said letter bore the printed signature of D. D. Wade as general secretary and treasurer of said The Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. One of said letters which is identical with each of the letters received by the undersigned is attached hereto marked exhibit "A." Said letters at the time of receipt by us were enclosed in Railroad Business Envelopes R. R. B. Standard Form 2595-926-1 M. M. and were distributed and delivered to us through the channels ordinarily and customarily used in the distribution and delivery of railway mail. No United States postage stamps were upon said envelopes and they carried no other indications of postage having been paid to the United States Postal Department. The face parts of the envelopes received by the undersigned whose names appear thereon are attached hereto marked Exhibit "B."

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Complainants also introduced in evidence the envelope referred to by the said D. L. Bartee and attached to his affidavit, as follows:

SOUTHERN PACIFIC LINES

(In Texas and Louisiana)

R. R. B.
Standard
Form 2595
9-26-1 MM

D. L. Bartee
Lake Charles

Letter referred to in said affidavit as attached thereto is the letter attached to the original information or petition charging alleged contempt as an exhibit (Exhibit B) and said exhibit is referred to and made a part hereof as fully as though set forth herein.

Complainants next introduced in evidence af-
461 fidavit of John W. Walker made October 13, 1927, together with three letters, or copies of letters, and the check therein referred to, as follows:

I am a resident of San Antonio, Texas, and was employed as a clerk by the defendant railroad company for about ten (10) years. About September 19, 1925, I was given leave of absence by said railroad company on account of my selection by the members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, Southern Pacific Lines in Texas and Louisiana to represent them with respect to various matters relating to wages, hours, working conditions et cetera. A carbon copy of my letter of August 30, 1925, addressed to W. W. Reed, Agent Southern Pacific Lines, San Antonio, Texas, requesting leave of absence, is attached hereto, marked Exhibit A and the reply of Mr. Reed thereto granting leave of absence is attached thereto marked Exhibit B. On October 6, 1927, I sent to the Treasurer of the Texas and New Orleans Railroad Company check for One dollar ($1.40) and forty cents, premium on group Life Insurance. On October 7, 1927, Mr. A. D. Mims, Superintendent, San Antonio Division of said T. & N. O. Railroad Company returned said check to me with a letter in which he advised that I was no longer considered as an employee of said railroad company. Mr. Mims' letter of October 7, 1927, is attached hereto, marked Exhibit C and said check for $1.40 is attached hereto marked Exhibit D.

No grounds have been stated to me as the cause of my dismissal and I have been given no hearing.

462 (Exhibit A, referred to in above affidavit of John W. Walker:)

August 30th, 1925.

Mr. W. W. Reed, Agent,
Southern Pacific Lines.
San Antonio, Texas.

Dear Sir:

In line with the attached letter from General Chairman H. W. Harper, to Mr. Torian, advising him of my election as a member of the General Committee, I would appreciate it if you will grant me an indefinite leave of absence in order that there will be no question as to my status when I find it necessary to again report for duty.

Thanking you for your attention in this matter, I am,

Yours very truly,

JWW

(Exhibit B, referred to in above affidavit of John W. Walker:)

1.—Leave of Absence.

San Antonio, Texas Sept. 9th, 1925.

Mr. John W. Walker,
211 Moore Building,
City.

Dear Sir:

Having reference to yours Aug. 30th, advising of your election as a member of the General Committee, B. of R. C. and requesting indefinite leave of absence, beg to say I am authorized by our Superintendent, Mr.
463 Mims, to grant you this leave as requested and as authorized under Rule 28 of the Clerks' agreement.

Yours truly,
Signed: W. W. REED,
Agent.

(Exhibit C, referred to in above affidavit of John W. Walker:)

Office of Superintendent,
San Antonio, Texas.

San Antonio, Texas October 7, 1927.

Mr. J. W. Walker,
#312 Dunning Avenue,
San Antonio, Texas.

Dear Sir:

Your letter of the 6th inst., and returning herewith your personal check of same date in sum of $1.40, covering October premium on Group Life Insurance.

As you are no longer considered an employee of these Lines, you will, of course, not be continued under Group Insurance plan. If you care to convert this insurance you have thirty days in which to communicate with the Metropolitan Life Insurance Company at their home office, New York City.

Yours truly,

Signed: A. D. MIMS.

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(Exhibit D, referred to in above affidavit of John W. Walker:)

464 San Antonio, Texas, Oct. 6th, 1927. No.

San Antonio National Bank

Pay to Treas. T. & N. O. Ry. Co. or order $1.40
One & 40/100 ..... Dollars

Signed: JNO. W. WALKER.

Complainants next introduced in evidence the affidavit of R. W. Lang, made October 14, 1927, as follows:

I, R. W. Lang, a resident of the City and County of San Francisco, State of California, hereby make the following statement concerning the actions of certain officers of the Texas & New Orleans Railroad Company in denying Mr. H. W. Harper the right and privilege of acting as the representative of certain employes of that railroad in a wage conference held in El Paso, Texas, on September 28, 1927:

In the capacity of General Chairman of the System Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, representing office, station and store employes of the Southern Pacific Company—Pacific Lines, and in the company of Mr. H. A. Christman, General Secretary of the Brotherhood and Mr. P. E. Whisner, Division Chairman of the Brotherhood, we met the said H. W. Harper in El Paso, Texas, on September 28, 1927, and proceeded to the office of the Superintendent of the Texas & New Orleans Railroad Company in that city for the purpose of meeting with Mr. A. J. Hancock, Assistant to the General Manager of the Southern Pacific Company—Pacific Lines, and Mr. J. G. Torian, Assistant to the Vice-President and General Manager, of the Texas & New Orleans Railroad Company.

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The purpose of such meeting was to discuss and attempt to agree upon rates of pay for employes of the two mentioned railroads employed in the El Paso Joint Terminal, such meeting having been previously arranged for between myself, Mr. A. J. Hancock nad Mr. J. G. Torian.

Upon arrival at the said office of the Superintendent of the Texas & New Orleans Railroad Company, I opened the door and stepped into the room, followed by the aforementioned H. A. Christman, P. E. Whisner and H. W. Harper. A gentleman, whom I recognized as a Mr. Mann, Assistant Superintendent of the Texas & New Orleans Railroad Company, and who was inside the room we were entering, stepped to the door and closed the same from the outside before the said H. W. Harper could enter. After arriving inside the room and noting that the said H. W. Harper was not present inside the room, I returned to the door, opened same and found the aforementioned Mr. Mann standing just outside the door with his arm across the opening in the door.

I inquired of the said H. W. Harper if he was coming in the room to attend the conference and he replied that the Assistant Superintendent, Mr. Mann, would not permit him to enter the room.

I thereupon inquired of the said J. G. Torian, Assistant to the Vice-President and General Manager of the Texas & New Orleans Railroad Company if it was true that the said H. W. Harper was being refused the right and privilege of attending the conference and
466 wage negotiations. The said J. G. Torian replied that the said H. W. Harper was not recognized as the representative of the employes on the Texas & New Orleans Railroad and would not be permitted to attend the conference.

I then called the attention of the said J. G. Torian to the fact that a signed Joint Agreement dated November 22, 1924, existed which had been signed by himself on behalf of the then Galveston, Harrisburg & San Antonio Railway Company (now the Texas & New Orleans Railroad Company), by the aforementioned A. J. Han-

cock on behalf of the Southern Pacific Company—Pacific Lines and by myself and the said H. W. Harper on behalf of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, representing the employes involved in the purpose of the conference and inquired of the said J. G. Torian if such Joint Agreement had been abrogated or changed in any manner.

The said J. G. Torian replied in effect that the aforementioned Joint Agreement had not been abrogated, nor changed, but that the method of representation of the employes covered by that agreement had been changed, further, that hereafter the employes of our class on the Texas & New Orleans Railroad company would be represented by the Officers of the Employes' Clerical Association. The said J. G. Torian made further statements to the effect that the Agreement between the Texas & New Orleans Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, covering the conditions of employment of employes of our class on that rail-
467 road had not been abrogated, but that the method of representation thereunder had been changed.

Upon my further protestations that the said H. W. Harper should be recognized as the representative of the employes of the Texas & New Orleans Railroad Company in the El Paso Joint Terminal under the terms of the aforementioned Joint Agreement of November, 1924, and permitted to be a party to the conference then about to take place, the subject of which was wages of employes, the said J. G. Torian continued to refuse to permit the said H. W. Harper to participate in the conference and made statement to the effect that if I did not

and would not recognize the Officers of the Employes' Clerical Association as representatives of the employes of his railroad that I was at perfect liberty to bolt the conference.

Complainants next introduced in evidence statement of clerical and station employees of Southern Pacific Lines in Texas and Louisiana as of September, 1922, as follows:

Southern Pacific Lines in Texas and Louisiana

Clerical and Station Employees—Number Employees September 1922.

Class—	Number Employed
Chief Clerks—Transportation Department	26
Ass't Chief Clerks—Transportation Dept.	6
Division Accountants	12
Chief Timekeepers	9
Secretary	13

Class—	Number Employed
File Clerk	11
Chief Clerk—MP&C	6
Clerks—MP&C	140
Chief Clerks—MofW	7
Clerks—MofW	44
Superintendent's Office Clerks	133
Clerks—Stores	124
Station Clerks and Yard Clerks	1,016
Train and Engine Crew Callers	53
Janitors	12
Messengers and Chore Boys	71

Porters	167
Motor Truckmen	6
Freight Handlers or Truckers	403
Callers, Loaders, Locators, Cooperers, Stowers, Stevedores, etc.	148
Common Labor—Stations, etc.	146
Telephone Switch Board Operators	6
Grand Total	2,559

Same being substantially correct as of 1927.

G. S. WAID was thereupon called as a witness for the plaintiff, and having been duly sworn, testified as follows:

My name is G. S. Waid. I am Vice-President and General Manager of Texas and New Orleans Railroad Company and have held this position for a number of years past.

The custom and practice of Texas and New Orleans Railroad Company and its officers in the mat-
469 ter of giving passes over the Railroad Company's lines to representatives of different railroad brotherhoods with which the Company has dealings is very well defined in that matter. We recognize the organizations with whom we deal and grant transportation to the officers of those organizations, pending satisfactory serice and conduct. We have many cases of record in which, for one reason and another, we have discontinued the courtesy or privilege. The custom is to grant transportation to representatives of the railroad brotherhoods and of the different crafts and classes of

employees employed by these Lines as long as they hold their positions and fill them satisfactorily and properly. In the case of some of the older organizations we have given their representatives rather lengthy and, in some cases, indefinite leave of absence, in the case of some of the older organizations, and in the case of some we are not quite so liberal.

As a matter of policy, the general officers of some of the so-called railroad brotherhoods, using the term "general officers" as meaning employees of our Company engaged in the service of the general committees on our Lines, are usually granted leaves of absence from the railroad company's employment. It is quite important that I go into detail in order to bring out our policy.

We had the case of a general chairman by the name of Barr who represented the Firemen's organization on our Lines for many years, carrying seniority, and he was furnished transportation. A few years ago he was advanced in his organization to the position of
470 vice-president, and of course his services were not directly or intimately connected with our service. We served notice on him that his seniority had been canceled and that we declined to give him further transportation. Mr. Barr was quite insistent and anxious that he be carried on our seniority list and that we give him the privilege of transportation. That has been so until day before yesterday a brotherhood man, a fellow member of his organization called upon me endeavoring to induce me to reverse my position in the matter and permit Mr. Barr to retain his seniority and the privileges that go with it. I explained to him that our policy was very well defined in those matters and that I could not do that. Mr. Barr was first a fireman and then later an engineer and represented the Firemen's

organization, but I could not recall exactly how many years he was inactive, but I would say not far from 25 years ago. I was myself with the Order of Railway Conductors about 25 years ago in a similar position. I finally had transportation and leaves of absence, but at first the railroad company was not so liberal as they were later.

Mr. Barr continued inactive so far as actually firing a locomotive and running one, for somewhere about 20 or 25 years. I don't believe that you could technically say that he had a leave of absence continued and more or less indefinite to perform the duties which from that time until recently he did representing the Firemen on the Southern Pacific. He was permitted to assume those duties without loss of seniority. If he had lost his job with the Firemen, he would have gone back on the seniority list and would have been entitled
471 just as though he had been working every minute running an engine, or whatever his seniority entitled him to.

For approximately 25 years, in round figures, he was engaged in inactive service and was engaged wholly in the matter of the Firemen's organization in relation to the matters connected between the railroad company and the Firemen on these Southern Pacific Lines. During all that time he retained his seniority and was kept on the roster of the railroad company's employees with his seniority reserved, and he had passes all during that period.

Recently he was elected and in some manner became away from the Southern Pacific Lines and off up here at Cleveland or somewhere, at the headquarters, with the Firemen. Then his relationship with the Southern Pacific Lines ceased.

Our position is that he left the railroad service entirely and became a railroad organization man up there with his headquarters in the East somewhere. He ceased to be an employee and under the law we could not furnish him transportation. We canceled his pass.

We had another case of a former chairman, an Engineer, on our lines and a member of the organization of Engineers who took up work with the Interstate Commerce Commission as Inspector of Equipment. He asked for and received permission to absent himself from our direct service for the purpose of trying out that position and I allowed him to do that until he could make up his mind as to whether he wanted to resume service with us or stay with the United States Government.

472 He finally decided that he would like to remain in the service of the Government as an I. C. C. inspector and I had his name marked off the seniority list and his passes canceled. His name was Taylor. I think the time he tried it out was something over two years probably, first one year, we only granted him leave of absence for one year, and then we extended it.

Another case was a matter of a Conductor. I will not name him. A certain number of years ago he indulged in reprehensible practices in connection with the handling of his work and I called him in and made him leave the community and canceled his passes as a representative of the Conductors. However, as an employee, I allowed him to ride on the train. He was selected by his organization as their representative and dealt with me on behalf of the company. For some reason that I say was reprehensible conduct, that I was satisfied about, I refused to work with him. I required him to give up that job as representing his brothers. He went back and ran his train as a conductor and get his passes as such.

Those cases outline our policy in matters of that kind and the matter of denying transportation, or rather denying employment, or rather constructive employment to Mr. Harper and the matter of withdrawing transportation is just in line with our practice. I know off-hand of no other instances except where an organization sets a man aside and elects somebody else. In that case it applies. I would not let him remain inactive any longer.

473 I would either make him go back to work or take his name off of the seniority rolls. I have found that necessary in several cases.

I do not recall the length of time the Brotherhood of Railway Clerks' representatives have been given transportation over our line and leaves of absence. They came into existence on our lines during Federal control and I presume from that time on. It may be true and probably is that during that time, the nine year period, the Brotherhood of Railway Clerks' representatives had their leaves of absence from their customary duties with their names kept on the seniority rolls and they had their pass privileges just like other representatives of brotherhoods similarly situated. That is, as far as I can say definitely. I do recall that one of their Chairmen on not being reelected by their organization was required by us to return to the service. We cut off his transportation and he preferred taking service with the Ku Klux Klan at San Antonio and he never did come back to our service as far as I can recall, and of course his transportation was canceled. We insisted that he come back to work at his regular job. It may be assumed that during the nine year period from the summer of 1918 up to the summer of 1927 the representatives of the Brotherhood of Railway Clerks enjoyed the privileges or indulgencies of leaves of absence and passes as representatives

of other brotherhoods did. It is a fact that in the Beaumont yards we have a contract with the Switchmen's Union of North America who have in their organization a majority of the men employed there, but in other yards on the System the Brotherhood of Railway Trainmen have the contract. Generally speaking the
474 Brotherhood of Railway Trainmen have a majority of all the switchmen employed in our yard service on the whole railroad system. They have seniority. The rights of the men in the Beaumont Yard are confined to Beaumont. They have elected to become members of the Switchmen's Union of North America and they have a majority and I think it has a majority of the employees in that organization and we have contractual relations with them. On the other parts of the system the BRT has the majority. Over the whole system the Brotherhood of Railway Trainmen has a great many more men than the Switchmen's Union of North America. In the Beaumont Yard the BRT have no look-in. They have no right to anything in Beaumont because we had a contract with the SU that was entered into so far back that I don't know when it was, and notwithstanding the BRT has tried to beat them out a good many times, we have always maintained the integrity of their contract there.

In answer to questions by the Court, he testified:

There are persons in the Association of Clerical Employees whom I think are temporarily engaged in the work of the Association in hand, but it is my understanding, although I do not know just what their intentions are, that they will have no so-called paid chairman. Their duties will only require them looking after

brotherhood affairs. Those employees retain their seniority and are entitled to transportation, though temporarily they are not working for the company. I think they intend to return to work. By virtue of their employment and their service they are entitled to such transportation as they need anyway. I don't know
475 whether those persons are on the payroll or not. They are old employees, however, and have acted recently in trying to promote the interests of the organizations they represent. At this time they are not doing any actual work for the company. I don't know whether they are still on the payroll or not but I am rather inclined to believe they are.

That is not a very unusual situation for the Company to have men active like that, not doing any work and still carrying them on the payroll; we frequently detach men from the service for the purpose of handling matters that are for the general good. For instance, we send men to an organization for fuel conservation every year. I presume there has been cases where the railroad company kept representatives of the employees on the payroll and allowed them to stay there without working where they were doing work that was worthy of such consideration. The work that they are doing now is worthy of consideration, by the company, it is very much in the interest of the company to secure a proper representation of interests and I should think that the company would be very much interested in that. I would not say that those men are really working for the company in organizing and promoting this Association and insuring friendly organization. We feel that they were doing work which is greatly to the interest of the company in promoting and insuring friendly or-

ganization. I have not said that they are on the payroll because I have not gone into that. I suppose I could furnish you that information. In fact, I'm sure I could.

On further Direct Examination, he testified:

It may be true, as stated in the affidavit of Mr. Torian, which is on file, that up to the present time the railroad company has made no deduction
476 whatever from the pay of the officers of the Association of Clerical Employees on account of whatever, if any, time they have lost from the discharge of their duties. I do not know whether it is true or not. I don't think I swore to that. I am testifying from my own knowledge and I am stating that I cannot testify whether or not it has been done. I do not know that D. D. Wade is doing little if anything else except work of the Association of Clerical Employees. I don't recall seeing him here in the Court room but once. I hardly know him. Here admitted by defendants that no deductions of pay have been made.

On Cross Examination, he testified:

In my direct testimony with regard to passes for "Officers," I tried to make the distinction between Officers of the railroad unions and general chairmen of the unions by saying that it was those officers occupying the position of general chairman who were allowed constructive service on our line. It is customary to extend that pass privilege to secretaries or general secretaries; it has been done. I think the secretary of some of the other organizations has been granted transportation.

It is not customary to continue the leave of absence or the pass privilege after an organization may have ceased to represent a majority or be recognized. That is certainly the reason why these were cut off. The revocation of passes legally and necessarily follow dropping of a man from the seniority list and from being constructive employees.

In answer to questions by Complainant, he testified:

Whatever may have been my custom with respect to the exact services performed by these different labor organi-
zation representatives, it did include for several
477 years, as far as I know from 1918 up to this summer, men performing services like Harper. I am not sure as to Walker. I think Walker did have a pass but I don't think it goes back to '18.

In answer to questions by Defendants, he testified:

I do not know of my own knowledge on what account Walker had the pass.

In answer to questions by the Court, he testified:

I do not recall a controversy like this between two organizations claiming to represent persons who are employees, in which during the period of the controversy the seniority rights of both representatives were maintained, ever coming up before. I know that prior to the 1922 shop strike we recognized the National organization, so-called, an American Federation of Labor concern, and with them leaving our service, a company

association was formed, and those men were given consideration that had formerly been granted to the national organization, and the national organization was deprived of those privileges.

During this present controversy the Brotherhood of Railway Clerks, represented by Harper and Walker, claim the right to represent the men and demand increased pay and change rules and so forth, and on account of our inability to reach an understanding or agreement with them, an intermediary was called in, Governor Neff.

There was a period of time before that when we were denying the right of these persons to represent the clerks. During that time we did deny the seniority and the passes of the representatives, I think, until
478 the matter was decided. We felt then, and later knew, that they did not carry a majority representation of the men. They had a majority of those who voted, those in the organization not taking the trouble to vote. Since that time, they have lost membership, and the unorganized men have been dissatisfied with their work and have banded themselves and formed an organization which is greatly in the majority, in my opinion, over the membership of the so-called union, probably two to one, or probably three to one,—I don't know whether it is three to one.

In answer to a question by Defendant, he testified:

I think that we continued the status as to passes and the retention of the seniority lists until after the time when, according to the judgment of the company, a definite decision had been made as to who represents the men. I will have to state my belief in that and not my exact knowledge, as I was absent at the time.

In answer to questions by Complainants, he testified:

We keep a personal record of these employees. I would not attempt to dispute the copy of our record which you have there showing that Harper was dropped from the seniority roster, the reason assigned being "Has performed no service for Company since June 24, 1923, and is dropped from the roster of employees," because I believe it is correct. I cannot testify as to whether Harper or Walker were offered the opportunity of returning to active service I am sorry to say. A good many of these things happened during my illness and absence and I don't know just what happened. I was
479 away from the first of July until the 15th of September. I don't know whether this bulletin that R. M. Glover, Superintendent at Lafayette, La., issued to conductors on August 12th to take up Harper's annual pass is a true copy or not, but I know that instructions were issued to do that, that he was not entitled to transportation under the law or under our rules, and he, I believe, declined to turn in his transportation upon request and it was necessary to take those steps. It was my understanding that Harper was requested to turn in his transportation. I do not know it of my own personal knowledge. I want to make that clear, that I am stating what I believe rather than what I know.

With reference to the reason the bulletin you show me was issued on the 12th to take up Harper's pass while his services were not terminated with the company until September 24th as shown by this record; I imagine the date on the record is the date on which it was made up. The action may have been taken against him much earlier than that. R. M. Glover is Superintendent at

Lafayette, La. As I stated before, I do not know whether he issued the bulletin that Harper's pass be taken up, but I do know that instructions were issued to put out such an order. I issued the order. I told Mr. Torian to arrange it. That was not prior to August 12th because I wasn't here at that time. I think I will have to retract my statement that I told Mr. Torian to arrange it; he did it on his own initiative, but I approved of it. I did not instruct then that he be dropped from the roll. I think that all took place while I was away. I think that is a full explanation of the
480 reason why that was done.

Complainants thereupon introduced in evidence copy of the bulletin just referred to, which is as follows:

T. & N. O. Railroad Co.,

Notice No. 551.

Lafayette, La., August 12th, 1927.

Passenger Conductors:

If Annual Pass A 25751 favor Mr. H. W. Harper, Timekeeper, residence San Antonio, Texas, S. P. Lines, is presented take up collect full fare and return to this office.

R. M. GLOVER,
Superintendent.

Post.

DEFENDANTS' EVIDENCE IN REBUTTAL ON THE HEARING ON THE RULE TO SHOW CAUSE FOR CONTEMPT OF COURT AS TO VIOLATION OF TEMPORARY INJUNCTION.

Defendants introduced in evidence answer of Texas and New Orleans Railroad Company to the affidavit or pleading filed by H. W. Harper, same also being the affidavit of G. S. Waid, made November 22, 1927, with Exhibit "A" and Exhibit "B" annexed, as follows:

Comes now Texas and New Orleans Railroad Company and for answer to the memorandum or pleading filed herein by and behalf of H. W. Harper, one of the complainants herein, on the 21st day of November, 1927, represents and shows to the Court:

481 That it is not true, as alleged in said pleading or memorandum, that the authorization presented by the Association of Clerical Employees of Southern Pacific Lines in Texas and Louisiana to this defendant and acted on by it were or are from less than a majority of the clerical employees of the defendant (other than general office employees) or that said authorizations were or are insufficient or invalid, but, on the contrary, said defendant represents and shows to the Court that the said authorizations were and are from a majority of said clerical employees, to-wit: from 929 and more of them.

Defendant represents and shows to the Court that the total number of signed authorizations filed by it herein was and is 938, but that in the count of same by J. L. Sexton, Esq., Deputy Clerk of this Court, under authority of the Court, one signature, being blurred or

apparently partly erased, was not counted; that defendant has caused the question of said signature and its validity to be investigated and finds that said signature was and is valid and, as evidence thereof, presents herewith, as Exhibit "A", the written statement of the signer aforesaid; that the fact that said signature was not counted as above alleged is shown on the original authorizations by notation thereon of the said J. L. Sexton, Esq., signed with his initials.

That it is a fact that there were and are on said lists five duplications of signatures, but said duplicate signatures were not counted or relied on by defendant, and accordingly, the total number of authorizations, less duplications, was and is 933; that there was also included in said authorizations one signed by Bert Campbell, who is a negro janitor employed on the El Paso Division, and also W. H. McCauley, a freight trucker at Lufkin, Texas. While these men work under the clerk's rules, they are not ordinarily eligible for membership in clerk's unions and were and are properly excluded from the count of authorizations, thereby reducing the said number to 931, which is more than the 929 claimed by the Association as of August 5 and 6, 1927.

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With respect to all said other authorizations defendant represents and shows to the Court:

(1) With respect to authorizations signed by some 661 clerical employees naming individuals as representatives but not expressly referring to the Association of Clerical Employees and to authorizations signed by some 90 employees said not to name any particular individual representative: Defendant represents and shows to the

Court that each and all said parties so named, or their representatives, and representatives selected by the clerical employees who had stated in writing, in substance, their desire to negotiate with the management direct for an association of clerks did in truth and in fact select their several representatives, either by written designation of named representatives and by majority vote and at meetings held for the purpose, designated and selected their several division representatives, which said several division representatives met in a body and elected and selected, as they were authorized to do by authorities expressly conferred upon them and by the custom of employees of railroads generally in selecting representatives and as authorized by the Rail-
483 way Labor Act, approved May 20, 1926, and selected and elected F. C. Ehlinger as General Chairman, A. G. Baker as Vice General Chairman, and D. D. Wade as Secretary and Treasurer of the Association of Clerical Employees and thereupon advised and proved to the defendant that the said F. C. Ehlinger, A. G. Baker and D. D. Wade were in fact the duly and legally authorized representatives of all said clerical employees so signing said authorizations without regard to the form thereof.

That under Paragraph Third, Section 2, of said Railway Labor Act it is provided:

"Representatives for the purposes of this Act shall be designated by the respective parties in such manner as may be provided in their corporate organization, or unincorporated association, or by other means of collective action * * *"

and that by Paragraph Second of Section 3 of said Act it is provided:

"Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

Pursuant to the foregoing allegations and provisions the said representatives and the said General Chairman, Vice General Chairman and Secretary and Treasurer notified defendant on said July 11, 1927, of their desire to meet, discuss and agree upon rates of pay and working conditions; and the agreement between the said parties, acting for their said constituents and the said defendant made and entered into on the 6th day of August, 1927, was in truth and in fact pursuant to the authorizations aforesaid and other authorizations obtained thereafter but on or before August 5th and 6th, 1927,
484 and thereupon presented to this defendant.

That included among the signers of said authorizations so presented to defendant on said August 5th and 6th, 1927, there were included, in addition to those hereinbefore referred to, approximately 80 names of laborers, freight truckers, porters and other employees coming under the class of laborers, who are covered and governed by the rules and rates of pay negotiated and agreed upon by and between representatives of the clerical employees and of the company, but who ordinarily do not become and are not ordinarily members of either the Brotherhood or the Association principally for the reason that their rates of pay being generally low, they cannot readily be persuaded or prevailed upon to pay dues. Defendant, as appears from said written authorizations, declined to count or to consider said signatures of said laborers as appears from signatures stricken out either by lines drawn through them or by cross-lines through entire groups of such signatures.

In addition to the foregoing, the signatures of two agents to said authorizations were stricken out by defendant, or at its request, and not counted.

And defendant submits that its count and check of the authorizations aforesaid and the signatures thereof was made in the utmost good faith, and that said Association and its representatives were recognized and contracted with by the defendant in the utmost good faith, and without the least purpose or intent of violating or evading any order of this Court.

485 (2) With respect to said authorizations not dated, said to number 422, or some such number: Defendant represents and shows to the Court that it was and is wholly unnecessary that said authorizations should be dated; that they were presented to defendant and were considered and acted upon by it on, to-wit: August 5th and 6th, 1927, and, having been so presented and acted on, were obviously executed prior to said dates.

(3) With respect to employees falling within the class of personal office forces, who have signed said authorizations and who have in fact authorized said Association to act for and represent them, amounting to 110, or some such number: Defendant represents and shows to the Court that the said clerical employees known as personal office forces are in truth and in fact clerical employees, entitled to be heard and to be represented in all matters which may be and have been handled between employer and employees by representatives of clerical employees, other than general office forces; that the said personal office forces are subject to rates of pay and to the rules of such clerical employees gener-

ally, save and except in the matter of seniority and of overtime, the matter of seniority being eliminated for the reason that such personal office forces may and often must be selected because of personal qualifications rather than because of seniority, and the matter of overtime being eliminated because the same is taken care of in the regular compensation of said employees, whose work requires them on occasions to work overtime in order to coincide with the hours of work of their superior officers; that in truth and in fact the Brother-
586 hood of Railway and Steamship Clerks has had among its members clerks employed as personal office force and some of its officers have been so employed; that, therefore, said personal office forces were and are properly included within the membership and authorizers of representation by said Association. That the wages and working conditions, except as to seniority and overtime, of said personal office forces are customarily regulated by agreements between representatives of the clerical employees generally and the railroad company and to deprive the said clerks included within the term "personal office forces" of representation in a clerks' organization would operate to deprive them of any voice in the determination of said matters.

That the foregoing is recognized and provided for by the said Railway Labor Act and in the proviso of Paragraph Fifth of Section 1 thereof as follows:

"That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission."

(4) With respect to signers of said authorizations, said to number 76, alleged by said Harper to have signed authorizations with the Brotherhood of Railway and Steamship Clerks, etc., after having signed with the Association, but prior to August 6, 1927, and to the 16, who are included in said 76 above referred to, said to have signed retractions of authorizations to the Asso-
487 ciation before August 6th, 1927: Said defendant represents and shows to the Court that none of said alleged signers of authorizations or of retractions had or have at any time made known to the defendant, or its officers, or, on information and belief, to the Association, or its officers, the fact, if it be a fact, of the signing of said alleged counter-authorizations and retractions, and the said Brotherhood of Railway and Steamship Clerks has not at any time made known said alleged fact either to the defendant or, on information and belief, to the Association; that the defendant, in counting and considering the authorizations of said parties, did so in good faith and without any knowledge or notice of any such retraction whatsoever.

Further with respect to said allegation, defendant represents and shows to the Court, on information and belief, that at least 20 of said parties said to have signed counter-authorizations or retractions are in truth and in fact now members of the Association and paying dues thereto.

(5) With respect to said authorizations alleged to be from employees whose names do not appear on rosters of the defendant and numbered 52, or some such number: Defendant represents and shows to the Court that defendant's rosters are made up annually about, and as of, the first day of January of each year; that there is,

of course, a large turn-over in the clerical employees of defendant and it is only natural and reasonable that there should be employees of defendant as of August 5th and 6th of any year not shown on the rosters as of the preceding January 1st, but that in truth and in fact all said employees were duly employed by
488 defendant in the capacity of clerks, or in capacities falling within the clerks' classification, at the time of execution of their authorizations. A list of said employees and their occupations is appended as Exhibit "B".

(6) With respect to 32 employees designated as messenger boys sought to be excluded by said Harper in his memorandum or pleading aforesaid: Defendant represents that messenger boys are in truth and in fact clerical employees and so considered both by the Brotherhood of Railway and Steamship Clerks and by the Association of Clerical Employees.

(7) That Creosote Works employees, 12 in number, are in truth and in fact clerical employees and were properly included in the count of representatives.

(8) That the Dining Car employees, 7 in number, included in said authorizations, were and are in fact clerical employees and properly counted.

(9) That alleged employees of Lake Charles & Northern Railroad Company, 7 in number, are in truth and in fact clerical employees of Texas and New Orleans Railroad Company and properly included and counted; that said Lake Charles & Northern Railroad Company, as a separate operating entity, ceased to exist on or

about March 1, 1927, and its properties have since that date been operated by Texas and New Orleans Railroad Company under lease and its former employees have been, since said date, and are employees of Texas and New Orleans Railroad Company.

(10) That truck drivers (6), elevator operator (1), private branch exchange telephone operators (3), janitor at El Paso who is in fact, in addition to being
489 a janitor, a messenger (1), assistant to the terminal freight agent at New Orleans (1), baggage agents (2), auto messenger (1) are each and all clerical employees and eligible as members in either the Brotherhood or the Association. Their working conditions and rates of pay are fixed by clerks' agreements.

(11) That the one employee alleged by the said Harper to be a telegraph operator (R. W. Henderson) is in fact a warehouse clerk at Mathis, Texas, and eligible to membership in either the Brotherhood or the Association. He is elsewhere objected to by said Harper as not on the roster, but is in fact on the clerks' seniority roster and on the pay rolls.

(12) That the said employee alleged by the said Harper to be an employee of the Gulf, Colorado & Santa Fe Railway Company at Fort Worth (T. B. Kemp) is employed at the Fort Worth Passenger Station, which is operated alternately by the Gulf, Colorado & Santa Fe Railway Company and Texas and New Orleans Railroad Company; that he holds seniority on Southern Pacific Lines and said Texas and New Orleans Railroad Company as of February 5, 1913, and has the right

to bid for any vacant clerical positions in his seniority district of Texas and New Orleans Railroad; that he is eligible to membership in either the Association or the Brotherhood as an employee of said Texas and New Orleans Railroad Company. He is elsewhere objected to by said Harper as not on the roster but he is on it and has been in the service 14 years:

490 (13) Assistant Freight Agent at Fort Worth has the title of Assistant, but in truth and in fact he is subordinate to the chief clerk as well as to the agent at said station. He carries said designation principally in order that he may execute live stock contracts, bills of lading and similar instruments required to be executed at the stock yards in Fort Worth. He is in fact a clerical employee and properly counted as such.

(14) With respect to Assistant to Terminal Freight Agent at New Orleans. Said employee is a clerical employee, eligible to membership in either the Association or the Brotherhood and is properly included in the classification of a clerical employee.

(15) With respect to employees signing said authorizations and alleged not to have been in the service of Texas and New Orleans Railroad Company as of August 6th, 1927, said employees being 6 in number: Because of the large labor turn-over in clerical capacities on defendant's line it was and is impossible that defendant's officers can currently keep up with such turn-over. All said employees were in good faith believed by the officers of defendant handling this matter to be actual employees at the time of said count and

they were all actually employees at the dates of their authorization. Their number has been more than offset by employees newly entering the service of defendant, who are members of or have authorized the Association to represent them.

(Signed) G. S. WAID.

State of Texas,
County of Harris.

G. S. Waid, being duly sworn, deposes and says:

491 I am an officer of Texas and New Orleans Railroad Company and have the knowledge and authority necessary to the making of this affidavit in its behalf. I have read the foregoing answer, know the contents thereof, and the matters and things therein are true, except as alleged on information and belief and as to said matters and things I verily believe them to be true.

(Signed) G. S. WAID.

Sworn to and subscribed before me on this, the ... day of November, A. D. 1927.

.....
Notary Public in and for Harris County, Texas.

EXHIBIT "A" REFERRED TO IN FOREGOING STATEMENT.

Algiers, La., Nov. 15, 1927.

Mr. F. C. Ehlinger,
Houston, Texas.

This is to certify that I did sign petition to be represented by the Association of Clerical Employees of the Southern Pacific R. R. and request that my signature be accepted as rendered.

With best wishes for the success of our Association, I beg to remain,

Yours respectfully,
(Signed) JOHN LOUGHRAN.

EXHIBIT "B" REFERRED TO IN FOREGOING STATEMENT.

List of Employees claimed by Plaintiff not to be on Seniority List of January 1, 1927, but in fact on Pay Rolls.

492 Louisiana Lines:
John J. Bibbins, R. M. Clerk, Morgan City.
A. L. Bourg, Steno. Supts. Office.

Dallas Division:
C. T. Dumas, Steno-Clerk, Supt's Office.
J. H. Pankey, Utility Clerk, Fort Worth.
Joe Baldridge, Jr., Timekeeper, M. M. Office, Ennis.
E. A. Horton, Asst. Bill Clerk, Dallas Frt. Sta.
H. M. Cloud, Roundhouse Clerk, Denison Shop.

Guy Tatum, Asst. Fuel Clerk, Ennis.
T. W. Borders, Roundhouse Clerk, Ennis.
Earl Johnson, Caller, Ennis.
S. A. Cave, Store Foreman, Ennis.
Earnest Allen, Caller, Hearne.
R. L. Hutchison, Messenger, Sherman.
M. C. Jones, Transportation Clerk, Ennis.
(On Leave of Absence at present.)
B. J. Donaho, Exp. Bill Clerk, Ft. Worth Frt. Sta.
O. W. Williams, Shipping Clerk, Ennis.
Jack Wilson, Jr., Roundhouse Clerk, Ennis.
W. E. Brittain, Caller, Ennis.
J. R. Duke, Messenger, Fort Worth.
T. B. Kemp, Clerk, Ft. Worth Psgr. Sta.
(Holds seniority date of February 5, 1913, on Southern Pacific Lines.)

Houston General Shops:
E. W. Clappert, Caller, Houston.
W. E. McCuller, Caller, Houston.
C. C. Casey, Caller, Houston.
493 James L. Booker, Messenger, Houston.
W. T. Finck, Messenger, Houston.

Austin Division:
Edward J. Simpson, Roundhouse Clerk, Waco.
Phillip O. Bengston, Rate Clerk, Austin.
H. T. Parker, Utility Clerk, Marble Falls.

Victoria Division:
Fred Moss, Baggage Agent, Victoria.
Wm. Hollis, Caller, Victoria.
C. L. Ross, Clerk, Skidmore.
L. F. Ezzell, Clerk, Edna.

Lee Wheeles, Clerk, Skidmore.
Ed. G. McCord, Messenger, Corpus Christi.
H. F. Dickson, Bill Clerk, Corpus Christi.
R. E. Dincans, Clerk, Victoria.
E. J. Harbich, Warehouse Clerk, Victoria.
L. H. Hardy, General Clerk, Corpus Christi.
H. E. Mizell, Caller, Victoria.
R. W. Henderson, Warehouse Clerk, Mathis.
(Also shown on Clerks' seniority list of January 1, 1927, with seniority date May 21, 1926, as Clerk.)

Houston Terminals:
Paul W. Young, (shown in paper filed by plaintiff as "Aubry Semo.")
W. J. Kerr, Line Desk Clerk, Houston Yards.
E. B. Hefner, C. C. to Div. Engr., Houston.
J. A. Bassett, Roudhouse Clerk, Galveston.
Jos. M. Neel, Transfer Clerk, Houston Yards.
W. L. Rilbert, Car Checker, Houston Yards.
494 H. A. Shiver, Caller, Houston.
Carl Blassingame, Steno. Houston Yards.
Adolph Rebuck, Car Checker, Houston Yards.
A. L. Chapman, Caller, Houston Yards.
Alton Shiver, Caller, Houston.
Earl Hensley, Car Checker, Houston Yards.
A. E. Grata, Caller, Houston Yards.
S. A. Coleman, Car Checker, Houston Yards.
Milton Ramsey, Caller, Houston.

Defendants next introduced in evidence supplemental answer of Texas and New Orleans Railroad Company and affidavit of M. Nicholson, comprising one instrument, made November 23, 1927, as follows:

Now comes Texas and New Orleans Railroad Company and files this, its supplemental answer and affidavit, to affidavit of the said H. W. Harper filed herein on November 21, 1927, and, in addition to the matters and things shown to the Court in its original answer and affidavit filed herein on November 22, 1927, represents and shows to the Court:

That of the six employees alleged and represented in the affidavit of the said Harper as having left the service of the defendant after executing authorizations in favor of the Association of Clerical Employees, Southern Pacific Lines, two of the said employees had, at the time of counting the said authorizations, not left said service. Said employees are as follows:

495 Mary Ruth, Material Voucher Clerk, Beaumont Division, Houston, Texas, who was on sick leave on or about August 5th and 6th, 1927, and whose name, therefore, did not appear on the rolls on said dates. Said Mary Ruth thereafter returned to her duties and under the rules and regulations of the defendant was still a clerical employee on the dates last referred to.

Nora Enderle, Utility Clerk, Division Engineer's office, San Antonio, Texas, was absent and not actually rendering service on said August 5th and 6th, 1927, and her name, therefore, did not appear on the rolls on or about said dates, but she thereafter returned to the service and under the rules and regulations of the defendant with respect to clerical employees was properly considered as in the service during the period of her said absence from duty.

MATTHEW NICHOLSON, called as a witness for defendant, and having been duly sworn, testified as follows:

My name is Matthew Nicholson. I am employed by Texas and New Orleans Railroad Company as wage adjuster and have been connected with that company for almost forty-eight years.

I have handled a great deal of business dealing with wages and working conditions with employees, particularly clerical employees, beginning during the period of Federal control and continuing since.

I know of the position known as "automobile messenger" on said lines and know, in a general way, something of the duties of the position. They go between the agent's office and Englewood yards and to some of the various industries and pick up mail in town.
496 The qualifying factor is knowledge sufficient to enable them to perform the duties satisfactorily and they must also have an automobile. I would think that they are clerks; that they are in a clerical capacity. They come under the clerks' rules according to my understanding. Their principal duty is to carry messages and waybills and things of that kind. On account of their furnishing automobiles at their own expense, furnishing gasoline, and taking care of the upkeep, they are paid monthly salaries, in which is included what is considered a sufficient amount, over and above what the positions would ordinarily bring, to compensate them for that extra outlay. I don't recall the Clerks' Union ever having made a specific claim for automobile messengers. They did make a claim for another similar class, known as "automobile industry clerks," the difference between them being that automo-

bile industry clerks go to the various industries and look up freight waybills and see what the industries are going to need. They are paid on the same basis.

I participated in the count of the authorizations in favor of the Association of Clerical Employees which have been introduced in evidence. I was present and took part in counting them. I then considered in good faith that these automobile messengers, or this automobile messenger was a clerk subject to the clerks' rules, and I believe he is in fact. He is claimed by the Association as a member. If he is not eligible to membership in the Association or the Brotherhood, he would be in a bad fix as far as membership is concerned. He would have no representation.

With respect to the employees known as personal office force: That question was involved in 1923. It
497 was then the position of the Railroad Labor Board that if we insisted on having them vote in the secret ballot then held, they would thereby have to practically surrender their classification because they would have to be considered as subject to all of the rules of the clerks' schedules. That was in all respects as I understood the decision made; as I recall it now. That was generally understood, I believe, by the representatives of the carriers and the clerks.

The Railroad Labor Board rendered a decision in that case, as I recall, and also in some other case that if the men were permitted to participate in voting on representation, the railroad would have to surrender their right to classify them separately from other clerical employees and would have to let them go under the general rules, which meant that seniority and overtime provisions and other rules of the schedules would apply, from which they had been exempted. These personal of-

fice forces are generally handled under the same working conditions as other clerks, except as to overtime and the filling of the positions on the seniority basis. They have some special privileges in that respect.

The rates of pay of chief clerks and all other clerks were fixed by the Railroad Labor Board in its Decision No. 2 in 1920. In Decisions Nos. 147 and 1074, which were issued later, the reductions also applied to all clerks, including chief clerks. The clerks' schedule itself does not contain a tabulation of the rates of pay. Those rates were established under various wage orders of the United States Labor Board.

498 When a vacancy occurs in a position of clerk, the clerks on that particular roster ordinarily have the right to file applications for the vacancy. These applications are called "bids". When they are gone over, if the oldest applicant has the requisite competence and ability to satisfactorily perform the duties of the position, he is assigned to it. If the claim should be made that he is not competent, the burden of showing that he is not falls on the officers of the company in charge. In the case of these personal office force clerks, a timekeeper, stenographer, chief clerk, or what not, the Superintendent has the right to select the most capable applicant without regard to seniority. In the event of a complaint of this, no clerk who might complain would have any ground for it because the foundation of the personal office classification is the lack of seniority, the non application of seniority rules.

Referring to the clerks' schedule and to paragraph 3 (a) of rule 1, where it says, "the appointing officer to be the judge, subject to appeal as provided in Article 4," —that means that if the railroad officers, acting under the rule, designate a certain position as being a personal

office force position and the employees involved think that it is improperly so designated, they may take an appeal. All rules in that schedule, I believe, are those that were prescribed by the Labor Board. Of my own knowledge, I cannot say that personal office force employees are eligible for membership in the Brotherhood of Railway and Steamship Clerks, but it is my firm belief and conviction that they are. As to the Association of Clerical Employees, I know that they are eligible
for membership. I have read the constitution
499 and by-laws—some time ago—but I know that
they are. I have known of an instance of members of the Brotherhood holding the position of personal office force. Ralph King, who was formerly the General Chairman, representing the clerks, was, as I recall, at the time of his selection as General Chairman, filling a position as head timekeeper at San Antonio, and that position is one of those classified as personal office force. I believe there was another one at Lafayette, a man named Mike Donlin, who was filling a personal office force position at Lafayette and was also acting as Local Chairman for the Brotherhood of Railway Clerks.

Referring to a letter which was introduced in evidence signed by E. A. O'Donnell, Superintendent of Terminals, Texas and New Orleans Railroad Company, at Houston: Mr. O'Donnell is not, and never has been, a final arbiter as to who is entitled to the proper classification of rights and duties.

Personal office force employees were counted by myself and associates in checking up the authorizations presented to us by the Association. We counted the personal office force employees in good faith and I now fully believe that they are entitled to be represented in

the clerks' organization—to be members of it. If they are not, they would be without representation, unless a separate agreement was made with them.

I do not recall that the personal office force employees, during the period of the existence of the United States Labor Board attempted to form an association. I don't believe they did as a class. I believe that a large majority of them signed those authorizations.

Referring to so-called messenger boys, call
500 boys, janitors, porters, laborers, and so forth: Laborers and so forth are carried in the clerks' schedule under a different classification from that of messengers and call boys. In going over the authorizations we threw out, with apparently two exceptions, all laborers, porters, and so forth, who were tendered as parties authorizing the Association to represent them. There were, as I recall, something over a thousand signatures presented and in going over them it was our purpose to throw out all common laborers and men who we did not think are properly entitled to come within the classification of clerical employees. We did throw out, I believe, some 80 or 85 signatures, possibly about 80, on this account, and some 3 or 4 on account of duplication. Assuming that there was a negro porter and a freight trucker still on the list and not stricken out, the failure to do so was due to an oversight, as we intended to cut out all the purely laboring class.

Messengers and call boys are included as clerks and clerical workers in the old clerks' schedule, and, as I recall, are also included in the new Association, and would probably appear to be subject to be counted. The Brotherhood of Railway Clerks have always undertaken to represent not only the messengers and call boys, but also the common laborers and everybody down the

line. The reason common laborers are not counted is, according to my idea, that a good many of them are negroes and they won't pay dues. If I were getting the money that they get I don't believe I would pay $2.00 a month either.

501 Messenger boys, probably 32 of them, are classified as clerical employees in the rules. To the best of my recollection there were messengers included in the agreed list of employees entitled to vote when that ballot was spread in 1923.

With respect to the six truck drivers: When we were counting the authorizations we rather hesitated about those, but reached the conclusion that they were properly

502 subject to representation by the Association of Clerical Employees and, therefore, should be included. I would say that we probably included the man who is a janitor and messenger at El Paso, because he had the title of messenger. I did not recall the case personally at the time. If that (messenger) is his occupation, I would think he was properly included. The clerks deal for the elevator operators. The private branch exchange operators are represented by the clerks' committee. I think that they, as well as the elevator operators, would probably be entitled to membership, if you can get the dues out of them.

I am not familiar with the situation at Fort Worth passenger station where it is claimed that one of the men, is shown by the affidavit to be an employee of the Gulf, Colorado & Santa Fe Railway Company. I could not speak from present knowledge, never having been on the ground or over it. The employee Kemp at the Fort Worth passenger station has a seniority date, as I recall it, from 1913 on the T&NO, Dallas Division, seniority roster. He was properly counted. That man has

the same right, as any other clerk in that district, to bid on positions in that district. The station is operated jointly. The Santa Fe will operate it for a while, then we will operate it for a time, and when the Santa Fe takes over the operation of the station, our men retain their rights, though the Santa Fe pays them. They have a right to bid on vacancies on our line; and then when the station is returned to us for operation, if those men are still there, they will be returned to us. In the same way, if the Santa Fe men are at work when we are operating the station they retain their
503 Santa Fe seniority—that is my understanding, but I could not speak of my own knowledge. Objection was made to 7 men on the ground that they were employed on the Lake Charles & Northern Railroad. There have not been any Lake Charles & Northern employees since March, 1927. They are all now employed on the Texas and New Orleans Railroad Company, which leased the properties of the Lake Charles & Northern and which operates them.

With reference to the man with the title of Assistant Freight Agent at Fort Worth: I am not familiar from personal knowledge on the ground with his duties and responsibilities. From information received in my official capacity as wage adjuster, I know that his duties are those of a high class clerk. They have him there to furnish service at the stock yards. My understanding is that the designation "Assistant Agent" is to enable him to execute shipping documents with the public rather than to do with the other duties which he discharges. He does not have anybody under him. He works by himself, but he would be under, probably, first the Chief Clerk of the Agent, next the Agent himself, and an Assistant Agent. In other words, he has plenty

of bosses. He is a clerical employee and was counted by me with the authorizations in favor of the Association in good faith.

I know that the Terminal Freight Agent at New Orleans has an Assistant Agent and that this man is an "assistant to". I would consider an "assistant to" a clerical position. Distinguishing an "assistant to" from an "assistant," the assistant exercises to a large
504 extent the same functions as a principal, but an "assistant to" is something like a high class Chief Clerk. I would consider the "assistant to" a clerical employee, and he was properly counted. I don't recall noticing it at the time, but I would have thrown him off or he would have been thrown off if it was thought that he was not entitled to be counted.

With respect to the baggage agents which have been challenged: They ordinarily are performing clerical duties and I consider should be counted.

The 7 dining car department employees were clerical forces, not cooks and waiters. The dining car department has officers and clerical forces just the same as other departments. They were properly classed as clerks and were counted.

With respect to the 12 creosote works employees: I have had occasion to handle the question of clerical forces at the creosote works on numerous times and I know that they have clerks there. These men are clerks, performing clerical duties. The creosote works is an organization that creosotes the timbers for the T&NO and is a part of the T&NO.

The LC&N is under lease by the Texas and New Orleans Railroad, and the LC&N employees are now on the payroll of the Texas and New Orleans and have been since March 1st.

With respect to the affidavit of Mr. Harper referring to 52 men whose names are said not to appear on the roster: First, as a matter of fact, in checking the detail sheets we found that there were 55 instead of 52 objected to. All of those names were carefully checked against the payrolls, which check showed, as I
505 recall, that everyone of them was in the service at the time of their signature. Their names all appear on Exhibit "B", attached to Mr. Waid's affidavit. I recognize some of those names and so far as I can determine from memory that is the same list of names. It was carefully checked.

With respect to the statement attached to the Harper affidavit; authorizations not dated, 422; authorizations not naming any representative, 90; authorizations naming individuals only as representatives, 661, there being of course some duplications in those figures. When I examined the documents and made the count, I did not entertain the least doubt as to what the documents meant. The examination was made principally by Mr. Torian, with me sitting there and assisting him and going over them. In fact, I kept the tally sheet, kept the count, and put down the figures as we made the count, and it was my total that was finally accepted. I do not think that there was any doubt in Mr. Torian's mind, and I am sure that there was no doubt in my mind that those men intended those representations as the matter was handled. The matter was handled in the natural way. It is seldom a thing of that kind comes up. It would be a little hard to say it was the usual way. I don't think there was any thought in anyone's mind, present, of being technical. The only object in view was to determine how many of the employees had authorized this

Committee to represent them. We determined that from a common sense standpoint and not from any technical standpoint.

In the Harper affidavit, the last two items on sheet 6,
506 it is claimed that these authorizations were from persons who it was said later signed retractions before August 6th, and authorizations from persons who signed authorizations for the Brotherhood after having been signed with the Association prior to August 6th; the first totaling 16 and the second totaling 76; in checking over this the 16 appeared to be included in the 76.

(Complainants admit that is correct.)

Neither the company, so far as I know or believe, nor I, had any knowledge from any source whatsoever of the execution of any of these 76 withdrawals. They were not filed with us and I had no knowledge of it either direct or indirect. I think, though, that I had heard that the organization was endeavoring to procure such withdrawals but they did not file them with the company, and, therefore, I had no knowledge of the withdrawals; or that they were in existence.

I recall one signature on the authorizations was blurred or looked as though it was partly erased and in the count in the Clerk's office by Mr. Sexton that signature was not counted, as shown by the notation made by Mr. Sexton, "Not counted, JLS." I was confident that that was a genuine signature and I asked that the matter be investigated and a letter was presented to me which I turned over to you from John Laughlin to F. C. Ehlinger, dated November 15, 1927, stating that his signature was to be counted, that it was genuine. That it was not intended to be erased.

I have looked into the matter of the 6 employees claimed not to have been in the service as of
507 August 6, 1927. I found that four of them had left the service prior to August 6th. Of the other two, one was a young lady stenographer or record clerk who was in the Southern Pacific Hospital, and was returned to service as soon as she was able to leave the Hospital. The other one was working as an extra clerk in the office of the Division Engineer at San Antonio and did not work during the last period of July, which was the payroll checked with Mr. Stearns as I recall, but did resume duty later and worked in September. I had no knowledge or notice that these four people were not in the service at the time they were counted. They were in the service when they signed. It is not possible to keep up minutely and closely with the run of such changes. In going over a matter of that kind we have never gotten down that close, and we could not, because during the time I am sitting here there may be two or three hired and two or three quit.

On Cross Examination, he testified:

The position of auto industry clerk is the one referred to in the correspondence which has been introduced in evidence. That position is that of a man who goes to various industries, takes waybills, and does some clerical services. There are two differences between an auto industry clerk and an auto messenger; the auto messenger get about more than the auto clerks, but practically the difference might be defined as the difference between any other messenger and a clerk. The messenger just performs some clerical duties, but you would say that the predominating character of the duties were those

of a messenger, and in the other case, those of a
508 clerk. I believe that what you are challenging here is the auto messenger and not the auto industry clerk.

With respect to personal office force and confidential employees: They do not have their pay regulated by any contract between the Railroad Company and the Brotherhood of Railway Clerks. I never knew that the Brotherhood had one. This document or paper which has been introduced in evidence is merely a memorandum that we had reached a mutual agreement that we would follow the rules of the Labor Board. As I recall this schedule, there is nothing in there that specifies the rates of pay for either personal office force or for other clerks. There was no schedule of pay agreed upon between the clerical employees,—the Brotherhood of Railway Clerks, on the one hand, and the company on the other. We were governed in the first place by the rates of pay established by the United States Railroad Administration, and later on by decisions of the United States Railroad Labor Board. We applied those schedules or those rates of pay to the personal office force and confidential employees. We applied them, but that does not mean that we in each and every case always followed them.

Most of the personal office force employees have a seniority date, but they don't hold their positions by virtue of that seniority date. And they were not entitled to pay for overtime. They were hired on a monthly rate and not entitled to pay for overtime.

The Fort Worth job that we were talking about, being
509 under the Santa Fe at one time and then for a few years under the Southern Pacific, has now been under the Santa Fe for a year or may-

be longer. A man is not subject to working under the instructions of the Southern Pacific as long as he is carried on the Santa Fe payroll, except so far as the Southern Pacific may handle with the Santa Fe officers however they want that job handled.

The L. C. & N. employees are over there on a little short line that is now leased by the T&NO. It is not true that the firemen and enginemen have up with the company a contention that those employees on that L. C. & N., ought to be grouped along with the S. P. employees. We have not as yet reached an agreement with our firemen and enginemen as to just where we will place those L. C. & N. men on the S. P. roster. We have reached an agreement with the conductors and the brakemen. We have not with the firemen because this arbitration up in Chicago kept the firemen's representatives away for the last two or three months. We have a question up with the firemen but I would not call it like question. It is as to where their place is to be and not whether they come along with like employees of the S. P. or not.

When we checked these clerical authorizations, as I recall, Mr. Torian had a statement taken from the payrolls of the different divisions. The committee themselves had checked the statement against those payrolls,—it is correct that when we checked these against the payrolls that we determined there were 6 employees which were not on it on August 6th, or August 1st payroll, two of which have returned to
510 work, and four of which we admit have not returned to work and are not in the employ of the company and were not on August 5th. In looking up those six men we went to the payrolls for each one, not any one payroll. We went to our July, August, September and October payrolls.

As I recall, the first check of the Association authorizations was made by the employees before they brought the authorizations in. Mr. Torion on August 5th or 6th called for some of the payrolls, but he also had statements of positions drawn from the payrolls, but I could not say just what payrolls were called for from memory. I did not handle the payrolls myself. I handled the tally sheets, counted the tally sheets. It was three weeks or more ago.

I recognize the fact that this is or purports to be, a seniority roster issued by the company as of January 1, 1927. The names of T. A. Sanders and A. H. Jones appear on that list classified by the company as white laborers, and another, F. Martinez, appears to be classified as a janitor at El Paso.

In a general way, the difference between Mr. Torian's affidavit showing approximately 1,855 employees and the claim of approximately 1,700 such employees is accounted for probably by personal office force and messengers. Without knowing it to be a fact, I would be inclined to think that the 1855 included messengers. I would say there are around 50 or 55 of them. I think the Brotherhood claim of 1700 probably included more than just clerks. It included some personal office force for the reason that the organization you represent has never conceded the personal office force classi-
511 fication of the great majority of those. In this little booklet which Mr. Crooker calls a contract and I call a memorandum they are excluded from the operation of certain rules.

With respect to truck drivers, engine callers, and that sort of employees, there is a definition in this little booklet as follows:

"Clerical workers are employes who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence and similar work. And then machine operators are employes who regularly devote not less than four hours per day to the operation of office or station mechanical equipment requiring special skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones and other similar equipments."

Exclusive of the personal office force and confidential employes, to the number of about 100 or 105, and about 60 messengers, I would say there were probably 1650 in round numbers along in June, July and August of this year. Then I would say there were probably 40 or 45 callers. I did not make the estimate of about 1855 such employees. Mr. Torian made it. I did not know it was being made until very recently when I saw the affidavit. I will say that was how we arrived at those figures.

If you included the porters and janitors you would increase that number to approximately that shown in the statement introduced as being representative of what they were in September, 1922. They were added
512 there. There are only six truck drivers. I think there are six in Houston. There might be more somewhere else on the line, but I would not say here. Those are automobile trucks, tractors and trucks.

It is not my contention that all of the classes of employees shown on here ought to be counted and considered as a class to arrive at this matter of representation with respect to the clerical employees. You have

the book there which shows the classification, which is generally considered, I believe, that sections 1 and 2 define clerical employees. In making the count we excluded laborers of all classes and porters, and I believe that this Association has excluded them from membership. Here is the classification that I was discussing. The people that are included on this side stop right about here, I think. They cut out these warehouse men and janitors. It looks like on the face of it that they were included, but three or four of these last designations were cut out, by the action of the Clerks' Union before they came to us. They did not include them in the membership in their Association. Assuming that the 1855 was based on the other men that you just enumerated a while ago, if you got any other employees other than the merely clerical employees, personal confidential, office force and the messenger boys and the callers, those four that go to make up 1855, if you undertook to put anybody else in, those four designations, the total would be increased above 1855 proportionately. As stated before, I knew nothing about that affidavit.

The other classes are so very small that it would not substantially change that figure of 1855 one
513 way or the other. I don't suppose you have got more than two or three of one and half a dozen or a dozen of another, and I would say if I were to assume at all, I would assume that in establishing the figure of 1855, Mr. Torian considered all classes that the Association of Clerical Employees had included in their membership. With reference to your statement that they had not presented anything at that time and that these things that Mr. Torian and I were doing were on August 5th and 6th and that his affidavit about there being substantially 1855 and these things were some

thirty or sixty days prior to that time; my recollection is that they had adopted a constitution and by-laws and filed a copy with us prior to that time, and that constitution and by-laws, as I recall it, enumerates the classes which they were undertaking to represent. Assuming that as a premise upon which Mr. Torian proceeded in his answer here to the suit, the way that I would arrive at the number of employees affected in this controversy would be simply to take the number of employees engaged in the line which the Association of Clerical Employees' constitution and by-laws would take in, and add them all up to get the 1855.

Mr. Torian is now in New Orleans because his wife had to have a serious operation and is in the hospital there.

514 Defendants next introduced in evidence the affidavit of G. E. GARRETT, dated November 30, 1927, as follows:

My name is G. E. Garrett, also called Edgar Garrett. I am employed by Texas and New Orleans Railroad Company as Insurance Clerk in the Houston Shops. It is not true that at noon on October 4, 1927, or at any other time I told Charles Ginsburg that if he would not join the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, he would be fired that day. I never made that statement, or any similar statement, to him.

Defendants next introduced in evidence the affidavit of HUGH DERR, dated November 29, 1927, as follows:

My name is Hugh Derr. I am Head Clerk, Accounting Bureau, T. & N. O. Shops, Houston, Texas, and have worked for that company in the Accounting Depart-

ment for nine years. On October 4, 1927, at about noon, I was in charge of the office, in which both I and Charles Ginsburg work. He came over to my desk just after the whistle blew for noon and told me he wanted to be off a while in the afternoon on account of having some important business to attend to. I told him I could not grant him the time off. He then went to Mr. Rooke, Chief Clerk, talked to him, came back to me and told me that he was going to take the time off anyway. He left without checking out. I told him before he left to be back at 1:00 o'clock. I spoke politely but firmly all through.

Mr. Ginsburg returned to work at 1:15 P. M., fifteen minutes late. He came over to take his ticket, but I had removed it after 1:00 o'clock. He came
515 over to me and asked me why the ticket was not there. I told him I had it and asked him why he did not comply with instructions, and he said he did in one way and in another he did not. He did not say why he was late. I told him he had been instructed to be back at 1:00 o'clock and that he would have to see Mr. Baker, Shop Accountant, before returning to work. He put on his hat and coat and walked out and went to town. About 2:00 o'clock he called up and inquired if Mr. Rooke had returned. When I told him that he had, he said he would come over to see him. I said nothing more to him during the afternoon, except when he asked about some work. I would say that he went back to work on that date at about 2:30 p. m.

He has not been competent to handle the work on which he has been put. His attention has been called many times to the fact that he was not keeping up his work, and he has been a source of continual trouble, being, as a whole, rather neglectful of his duties.

I made a detailed report of Ginsburg's conduct in line with the above and he was discharged. So far as I know or believe, he was discharged solely because of his insubordination and incompetence.

Defendants next introduced in evidence the affidavit of J. D. ROOKE, dated November 30, 1927, as follows:

My name is J. D. Rooke. I am Chief Clerk, T. & N. O. Shops, Houston, Texas, and have been so employed for a long period of time. About 12:05 Noon on October
4, 1927, Charles Ginsburg, a clerk in the T&NO
516 Shops, came to my desk and said to me that Mr. Hugh Derr had refused to let him off for about half an hour in order that he might attend to some personal business. I told him that Mr. Derr was in charge of the Shop Accountant's Office at that time and that he was fully conversant with the condition of the work in the office and, therefore, was in position to know whether or not he could spare a clerk from his work. He said that Mr. Derr had it in for him and that he was getting tired of it, and went off mumbling something that I could not understand.

He came to my desk about 2:30 p. m., the same day and said that Mr. Derr had taken his ticket from the rack and he wanted to know from me if he could not go to work. I told him that he could go to work pending investigation of his case. He returned to his desk, I suppose, resumed his duties.

He said nothing to me about suffering from a toothache.

Defendants next introduced in evidence the affidavit of J. T. CONNOR, dated November 30, 1927, as follows:

I am Superintendent of Shops, Texas and New Orleans Railroad Company, at Houston, Texas. Charles Ginsburg was employed in the Shop Office at Houston and was subordinate to me. Conduct of Ginsburg as set out in the annexed affidavit of Hugh Derr was duly reported to me and, as a result, I suspended and recommended the discharge of said Ginsburg from the service. The discharge was solely because of his insubordination and incompetence and had nothing to do with his membership or non-membership in the Brotherhood of
517 Railway and Steamship Clerks, etc.

Defendants next introduced in evidence the affidavit of J. A. POWER, dated November ..., 1927, as follows:

My name is J. A. Power. I am and for a number of years last past have been Superintendent of Motive Power and Equipment of Southern Pacific Lines in Texas and Louisiana, including Texas and New Orleans Railroad Company.

The matter of suspension and discharge of Charles Ginsburg for conduct set out in annexed affidavit of Hugh Derr was submitted to me for approval or disapproval in the usual course of handling such matters. I approved the discharge of Ginsburg.

My approval of discharge was not in any way influenced by membership or non-membership in the Brotherhood of Railway and Steamship Clerks. I had no knowledge at the time what, if any, organization he belonged to or was affiliated with.

In connection with the discharge of Ginsburg: The only matter, other than his insubordination and incompetence, which affected me one way or the other in approving the discharge was a letter dated September 30th,

1927, from Messrs. Cole, Cole & O'Connor, reputable attorneys of Houston, copy of which is attached and marked "Exhibit A."

With respect to incompetence: Our records disclose that at one time Ginsburg was set back and lost one-fifth of his seniority because of incompetence in his work.

518 EXHIBIT A, REFERRED TO IN THE FOREGOING AFFIDAVIT OF J. A. POWER.

Exhibit "A".

Cole, Cole & O'Connor,
Attorneys and Counsellors,
Public National Bank Building,
Houston, Texas.

Received Oct. 1, 1927, Pay Department.

Sept. 30, 1927.

Robert L. Cole,
John F. Cole,
A. O'Connor,
W. A. Shields,
B. B. Patterson,
W. L. Kempner,
Pay Master,
S. P. Railroad Co.,
S. P. Bldg.,
Houston, Texas.

Gentlemen:

We have an account against Mr. Charley Ginsburg who we understand is employed by you and we have repeatedly made demand on him for an account due our client L. W. Kohn. Mr. Kohn owed an obligation to a

wholesale dealer of our city and gave Mr. Ginsburg $75.00 cash with the understanding that this money was to be paid to the Wholesale creditor of Mr. Kohn. The failure of Ginsburg to pay this account resulted in a suit against Kohn causing him to lose his entire stock of merchandise and still Ginsburg refuses to pay this money. He admitted over the telephone that he owed this obligation but it was personal between he and Kohn and has refused to give us anything on the account.

Our client also let Mr. Ginsburg have a gun which he prizes very highly and he has often requested that Ginsburg return this gun, but Ginsburg has always given an excuse that the gun was at a friends house, and when client would call for the gun he was advised
519 that the gun had been returned, and at this time neither the money or the gun has been returned to our client.

Our client seems to think that Mr. Ginsburg has sold the gun and has requested that we file suit, but before doing so we thought it advisable to take the matter up with you and if you deem it advisable to take the matter up with this debtor we would certainly appreciate any courtesy that you may extend us.

Yours truly,

(Signed) COLE, COLE & O'CONNOR.

RAB-LH.

Defendants next introduced in evidence the affidavit of F. C. EHLINGER, dated November 29, 1927, as follows:

I am General Chairman of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. I have heard read affidavit of Charles Ginsburg,

Personal Injury Clerk, Texas and New Orleans Railroad Company's Shops, heretofore filed in this proceeding, with respect to his discharge.

It is a matter within my own knowledge that on or about November 21, 1927, C. Valentine, who is a member of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, heretofore working in the Division Timekeeping Bureau, Texas and New Orleans Railroad Company's Superintendent's Office, Beaumont Division, was discharged substantially as was Ginsburg—that is to say, he failed to report for duty when required.

Mr. Valentine subsequently asked permission to have his record of discharge on above ground set
520 aside and asked to be permitted to resign. This was granted him. He did resign and is now out of the service.

Insubordination is a common cause for discharge of railroad employees, as proper subordination to duty is essential.

Defendants next introduced in evidence the affidavit of MAT NICHOLSON, dated November 30, 1927, and Exhibit "A", therein referred to, as follows:

I am the same Mat Nicholson who has heretofore testified in this proceeding by affidavit and in person.

I have in the files of Texas and New Orleans Railroad Company list of names, addresses and positions of clerical employees entitled to vote on the ballot spread in June, 1923, pursuant to decision of the United States Railroad Labor Board. Said list of names, addresses and positions was agreed on by Texas and New Orleans Railroad Company (and other Southern Pacific Lines

then operating), Association of Clerical Employees and Brotherhood of Railway and Steamship Clerks as containing the names of all employees entitled to vote at said ballot.

Said list of clerical employees entitled to vote as aforesaid contains, among others:

Messengers, Office Boys, Callers, Mail Boy, Baggage Agent, Automobile Messengers, Assistant Baggage Agent,
Private Branch Exchange Telephone Operators,
521 Clerical employees in Dining Car Department,
Clerical employees at Creosote Works of Texas and New Orleans Railroad Company.

and also includes clerks, gatemen and miscellaneous clerical employees.

Among the employees on said list is T. B. Kemp, then and now Assistant Baggage Agent at Fort Worth Passenger Station.

Said list contained personal office force employees, including among them Ralph J. King, who was at that time General Chairman of the Brotherhood of Railway and Steamship Clerks. However, all personal office force employees were stricken from the list by agreement and because the United States Railway Labor Board ruled that while such employees were entitled to vote as clerical employees, yet, if they did vote, they would have to come under the clerks' agreement in all respects, including seniority and overtime, and the Railroad Company was unwilling that its operations should be hampered by having such employees come under the rules in said two particular respects.

Attached hereto and marked "Exhibit A" for identification is copy of letter of June 26, 1923, addressed by H. W. Harper, then Acting General Chairman, Brotherhood of Railway and Steamship Clerks, etc., to J. G. Torian, giving the views of said organization with respect to employees classed as personal office force.

EXHIBIT "A", referred to in the above affidavit of Mat Nicholson:

San Antonio, Texas, June 26, 1923.

522 Ballot to Determine Representation Clerical Employees, Other than General Office Employees:

Mr. J. G. Torian,
Asst. to VP&GM.,
Houston, Texas.

Dear Sir:

This in reply to your letter of June 21st, above subject.

We seem to be at variance as to the basis upon which this committee contended that the 110 employees, classified by the carrier as Personal Office Force, should not be permitted to vote.

Labor Board decisions, covering similar disputes on other lines, have in very plain language stipulated that only those employees, whom the carrier is willing to include within the scope of the agreement, shall participate in the vote. The contention of the committee, that the 110 employees, classified by the Management as Personal Office Force, should not be permitted to vote,

is based upon the above referred to decisions. Since your office has made known its unwillingness to include the disputed 110 within the scope of the agreement, we feel that our contention is well founded.

We cannot agree with you in your understanding that these 110 employees are not properly subject to our rules and that they were, for that reason, not permitted to vote.

Yours truly,

(Signed) H. W. HARPER,
Acting Gen'l Chairman.

523 Defendants next introduced in evidence the affidavit of C. W. DERRINGTON, dated November 29, 1927, as follows:

My name is C. W. Derrington. I am Chief Clerk to E. A. O'Donnell, Superintendent of Terminals Division, Texas and New Orleans Railroad Company, who, prior to his appointment to that place was Superintendent of Terminals of said Company at Houston, and I am familiar with this entire matter. The Local Freight Office of Texas and New Orleans Railroad Company in the City of Houston is included within the Terminals Division.

On May 17, 1927, the office of E. A. O'Donnell received from J. A. Sanders, Agent at Houston, under whom B. G. Hudson was employed, a request for a trip pass for Hudson's mother from Laurel, Mississippi, to Houston, Texas, and return, via New Orleans and Northeastern Railroad Company and Southern Pacific Lines. The Pass Bureau, to whom the request was forwarded with Mr. O'Donnell's favorable indorsement, thereafter returned the request with advice that the New Orleans

& Northeastern would not issue passes for employees until they had at least two years' service, Hudson having had less than that period of service. On May 24, 1927, the said Hudson requested that routing via New Orleans and Northeastern be eliminated. The passes were, accordingly, requested in the usual way and in due course we received and caused to be delivered to Hudson Illinois Central Pass No. 115267 and Southern Pacific pass No. B-7163 in favor of his mother. Said passes were, however, through some error, made one way only—that is, only from Laurel, Mississippi, to Houston, without return. They were returned to
524 Mr. O'Donnell by said Agent on September 3, 1927, with request that they be canceled and accompanied by a revised request for passes in favor of Hudson's mother from Houston, Texas, to Laurel, Mississippi, and return. On this revised request we received and caused to be delivered to Hudson Illinois Central pass No. 136560 and Southern Pacific Lines pass No. B-27083, both in favor of his mother. These passes were returned to Mr. O'Donnell's office by the Agent on September 21, 1927, because they read in the wrong direction and were accompanied by a final corrected request for passes from Laurel, Mississippi, to Houston, Texas, and return to Laurel.

We became suspicious of Hudson, and re-examined the written request for passes made by Hudson and found that in response to question "Is person entirely dependent on you for support?" he had at first answered "One-half" but had crossed this out and inserted "Yes", and in answer to question "How long have you been this person's sole support?" he answered "One year."

The matter was investigated, Hudson was given a hearing, and admitted that his mother was not wholly dependent on him for support, he claiming, however, that she was about one-third dependent on him.

He was given an opportunity to resign, as is frequently done, in order that it may be easier for a man to get employment with another line. He, however, declined to resign and was, on October 28, 1927, discharged on the ground that he had attempted to obtain free transportation through misrepresentation.

525 The discharge of Hudson was solely because of the foregoing action by him and was in no way connected with any activities on his part in the above cause or in connection with the Brotherhood of Railway and Steamship Clerks, etc.

False statements made to obtain free transportation have always been considered ground for discharge by officers of Texas and New Orleans Railroad Company. In cases where the pass has been used, such employees are generally required to refund the money value of the transportation wrongfully used and are then discharged. Where the pass has not actually been used, they are simply discharged.

Defendants next introduced in evidence the affidavit of D. D. WADE, dated November 28, 1927, as follows:

I am General Secretary and Treasurer of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. I am the same D. D. Wade referred to in affidavit of D. L. Bartee, Clerk at Lake Charles, La., and the signer of the letter therein referred to.

The letters referred to were sent out by me or under my direction to all, or practically all, of the clerical employees on the Southern Pacific Lines in Texas and Louisiana, except General Office employees. I did not send out any of said letters by railroad mail or in railroad business envelopes, nor did I authorize anyone to do so.

The address written on the envelope attached to the affidavit of the said D. L. Bartee was not written by me and I do not recognize the handwriting as that of any person known to me.

526

Prior to sending out said circulars, I had requested advice from the officers of Texas and New Orleans Railroad Company whether the letter referred to and other mail of the Association of Clerical Employees could be sent out by railroad mail and I was advised that the General Counsel of the Company had ruled that while it was probably not unlawful to use the railroad mail, it was not desirable that it should be so used. I, accordingly, sent out said circular letters by United States Mail, duly stamped, and in envelopes which I purchased for the purpose.

Standard R. R. B. envelopes of the kind attached to the affidavit of said D. L. Bartee are available at every agency station, yard office and offices of practically every kind on the Southern Pacific Lines in Texas and Louisiana and anyone in the employ of said Lines, or having access to said offices, could readily obtain one or more of said envelopes. Said envelopes, after being deposited in the railroad mail, sealed and addressed, would be carried to destination and delivered without investigation as to contents.

Defendants next introduced in evidence the affidavit of A. A. SIMS, dated November 29, 1927, together with Exhibit "A" and Exhibit "B", therein referred to, as follows:

I am and for a number of years last past have been Superintendent of Freight Claim Prevention of Southern Pacific Lines, including Texas and New
527 Orleans Railroad Company. The duties of myself and of my office include the examination of files in freight claims, usually paid claims, and the taking of steps to diminish such claims by remedying improper conditions which bring them about.

On October 18, 1927, I, as Superintendent of Freight Claim Prevention, wrote A. D. Mims, Superintendent, Houston Division, Texas and New Orleans Railroad Company, at San Antonio, Texas, a letter, copy of which is hereunto annexed and marked Exhibit "A" for identification, with respect to erroneous billing of a carload of watermelons from Seguin, Texas, to Fort Worth, Texas, whereas it should have been billed to Wichita, Kansas.

On October 26, 1927, I, in the capacity aforesaid, wrote to the said A. D. Mims, Superintendent, Houston Division, Texas and New Orleans Railroad Company, at San Antonio, Texas, another letter, copy of which is hereunto attached marked Exhibit "B" for identification, with respect to another carload shipment of watermelons billed from Seguin to Wichita Falls on July 23, 1927, which should have been billed to Wichita, Kansas.

The facts stated in each of said letters were and are, according to the records of my office, true and correct.

At the time of writing said letters I did not know who was responsible for the said errors and my sole purpose in writing the letters was that this fact might be ascertained and proper discipline applied to prevent a recurrence.

Exhibit "A", referred to in the above affidavit of A. A. Sims, is as follows:

528 EXHIBIT "A".

Houston, October 18, 1927.
(350-13928.)
(Claim 690335-9.)

Mr. A. D. Mims,
San Antonio.

Dear Sir:

Attached find all papers in my file.

Claim in the amount of $173.78 was passed to voucher today by Mr. Webb and the amount paid was distributed as follows:

Fifty percent or $86.89 was charged to these lines account shipment being erroneously billed to Ft. Worth and which error caused the car to be held at Ft. Worth from 5 AM July 24th to 5 PM July 27th.

The balance of the amount paid was distributed on mileage prorate as unlocated damage account of rough handling and our proportion amounted to $17.41.

I want to make this file the subject of a claim bulletin and I will appreciate your returning papers with advice of what corrective action is taken by your office to eliminate billing errors of this kind.

Yours truly,

(Signed) A. A. SIMS.

EXHIBIT "B".

Exhibit "B", referred to in above affidavit of A. A. Sims, is as follows:

529 Houston, Oct. 26, 1927.

File 350-14249.
Claim 691563-9.

Mr. A. D. Mims:

Claim in the amount of $115.60 is being passed to voucher today in favor of J. S. Handly & Son and for loss account of delay on a car of melons moving on Seguin to Wichita Falls Waybill TN 141, dated July 23rd, and loaded in MLT 14249. The claim is supported with the original bill of lading showing the destination of the shipment was Wichita, Kansas. Car moved to its billed destination and was held at Wichita Falls undelivered on July 28 and disposition was requested by the Agent at that station. Car was diverted from Wichita Falls to Cedar Rapids, Iowa, and the error in billing caused a delay of two days in the arrival at final destination. Under date of Oct. 18 I addressed you under my file 350-13928 regarding a similar billing error at Seguin which costs these Lines 173.78. In that case the car was erroneously billed to Ft. Worth by the Seguin Agency. Will you kindly handle this error in connection with my letter of Oct. 18 and return all attachments as soon as possible.

(Signed) A. A. SIMS.

Defendants next introduced in evidence the affidavit of A. D. MIMS, dated November ...., 1927, as follows:

My name is A. D. Mims. I am Superintendent of Houston Division, Texas and New Orleans Railroad Company, and have been for a number of years.

530 On or about October 19, 1927, there was received at my office a letter from A. A. Sims, Superintendent of Freight Claim Prevention,

Texas and New Orleans Railroad Company, with respect to a claim for erroneous billing of a carload of watermelons from Seguin, in which $173.78 had been paid in settlement.

On October 28, 1927, there was received at my office another letter from the said A. A. Sims with respect to another instance of misbilling of a carload of watermelons from Seguin, in which a claim amounting to $115.60 had been paid.

Both these letters were forwarded to the Agent of said Railroad Company at Seguin, Texas, for report as to responsibility and excuse, if any, for the errors.

It was clearly shown that both errors were made by Clerk R. E. Stotzer, of Seguin.

Because of so many errors of this kind occurring over the Division from time to time during the past six or seven months, resulting in threatened loss of business and heavy claim payments, I deemed it advisable, for the good of the service, that vigorous action should be taken and I, accordingly, directed that Clerk Stotzer should be relieved from the service.

The discharge of Stotzer was solely on account of these errors and was not in connection, directly or indirectly, with any activities on his part in the above proceeding or in connection with Brotherhood of Railway and Steamship Clerks, etc.

Neither I, nor my office, knew anything about these errors until the letters above referred to were received from the Superintendent of Freight Claim Prevention in the ordinary course of business.

531 Defendants next introduced in evidence the affidavit of F. H. BEDNARK, dated November 30, 1927, as follows:

My name is F. H. Bednark and I am and for a number of years last past have been Assistant Superintendent, Houston Division, Texas and New Orleans Railroad Company. I am familiar, in a general way, with the discharge of Clerk R. E. Stotzer, of Seguin. Said discharge was solely on account of errors committed by him in the billing of shipments of watermelons out of Seguin, said errors having cost the company substantial sums in the payment of claims.

No activity of the said Stotzer in the above suit, nor in the Brotherhood of Railway and Steamship Clerks, etc., had anything to do with his discharge.

Defendants next introduced in evidence file of correspondence regarding request for passes made by B. G. Hudson for his mother, from Laurel, Mississippi, to Houston, Texas, as follows:

I hereby make application for free transportation for the person named below:.

Name—Mrs. Hattie Hudson.
From Laurel, Miss. to Houston, Texas & Return.
Over what line of Rly.—TNO. Good until 90 days from issue.
Relationship to Undersigned Employee—Mother.
Residence—Laurel, Miss. Age—60. Married—Widow.
Does Person make permanent home under your roof—No.
532 Is Person entirely dependent on you for support—onehalf—Yes.
How long have you been this person's Sole support—One Year.
Occupation of Person, if any—None.

Has person any property, income, or other means of support, or anyone contributing to support other than yourself? If so, state circumstances.

Are Parents living, if so why do they not support the Person .....

For what purpose is pass desired—visit.

I make this statement in view of the fact that passes are prohibited by Federal and State laws under penalty of heavy fine against both the Railroad and the party using same, when issued to other than certain excepted classes, and I hereby certify that the above statement is correct and shows the true circumstances of the person for whom free transportation is desired.

(Signed) B. G. HUDSON,
Occupation, Claim Clerk.
Length of Service over one year.

I have investigated the above case, the statements are true and I recommend issuance.

(Signed) J. A. SANDERS.
Title.

Houston, Texas, May 24, 1927.

Mr. J. A. Sanders,
Agent, TNO Ry.,
Houston, Texas.

Dear Sir:

With reference to the attached papers regarding my request for pass for Mrs. Hattie Hudson, Mother, routed via N. O. & N. E., S. P.

Inasmuch as the request was returned with notation from New Orleans Northeastern with notation will not issue pass until two years service. Please request from New Orleans via TNO Ry. and eliminate N. O. N. E. Thanking you for the favor,

Yours respectfully,

533 (Signed) B. G. HUDSON.

Houston, Texas, September 23, 1927.

Mr. J. A. Sanders:

I am in receipt of Form 2313 requesting transportation for Mrs. Hattie Hudson, dependent Mother of Clerk B. G. Hudson, from Laurel, Miss., to Houston and return. The original request on which transportation was furnished requested that passes be issued Houston to Laurel, Miss., and return, and with this Clerk Hudson furnished a dependency blank on which he, no doubt, showed his mother's residence as being with him. Am attaching dependency blank herewith, which must be executed to accompany the request first above referred to. Pass rules will not allow the granting of transportation unless the dependent member of family for whom the transportation is requested makes their residence with the applicant.

E. A. O'DONNELL.

Houston, Texas, Sept. 27, 1927.

Mr. E. A. O'Donnell,
Supt. Terms.,
Houston, Texas.

Dear Sir:

Your letter of September 23rd, enclosing a dependency form to be executed by Clerk B. G. Hudson, in connection with transportation requested for his mother.

Hudson now requests that the passes mailed you with his request of September 21st, be returned, as he claims arrangements can be made for her to use this
534 transportation and it will not be necessary to have the change made.

Yours truly,

(Signed) J. A. SANDERS, Agent.

Houston, Texas, September 29, 1927.

Personal.

Mr. J. A. Sanders:

On May 17th, Clerk B. G. Hudson, requested transportation in favor of his mother from Laurel, Miss. to Houston. On advising you that as she was not living at Houston she evidently was not residing under his roof, therefore, transportaton could not be furnished. Under date of September 3rd a round trip pass for her was requested from Houston to Laurel, Miss., and return. I now have these passes but am not satisfied that this a legitimate request. On Hudson's personal record, he states that his mother resides at Jackson, Miss., and that she was partly dependent on him for support. If he contends now that she is solely dependent on him, have him explain what circumstances have arisen which changed the status since he entered our service in May, 1926. Also inquire whether she resides in Mississippi or with him in Houston and if the latter how did she get to Mississippi?

Yours truly,

Houston, Texas, October 4, 1927.

Mr. E. A. O'Donnell,
Supt. Terms.,
Houston, Texas.

535 Dear Sir:

Your letter September 29th, regarding transportation requested for Mr. Hudson's mother, has been referred to Mr. Hudson.

Kindly note his letter next attached.

Yours truly,
(Signed) J. A. SANDERS, Agent.

October 3, 1927.

Personal. 5.

Mr. J. A. Sanders,
Agent, TNO Ry.,
Houston, Texas.

Dear Sir:

In regard to pass requested for Mrs. Hattie Hudson wish to advise that I did not technically understand the form for request I filled out and that Mrs. Hattie Hudson, my mother, is one third depending on me for support.

I had wished for her to visit me for three months and for me to bear extra expenses is out of the question at present as there has numerous developments since I began work for this company.

It is surely not my intention to obtain any compensation whatsoever that I am not entitled to. Therefore, if I am in error in my request for pass please withdraw my request.

Yours truly,
(Signed) B. G. HUDSON.

536 Houston, Texas, Oct. 28, 1927.

Memorandum:

In the presence of Agent J. A. Sanders, Chief Clerk C. W. Derrington and the undersigned, Freight Station Clerk B. G. Hudson presented himself at Superintendent's office on the morning of October 27th, and was there confronted with a document pertaining to the dependency of his mother, on account of which certain free transportation has been requested. Clerk Hudson recognized and acknowledged the signature on the dependency blank, as his own. He admitted that his mother was not entirely dependent on him for support, and furthermore that he had not been her sole support for one year as indicated by the form to which he affixed his signature. After discussing the matter of his responsiblity in executing such a document, and explaining to him the seriousness of such action on his part he was given an opportunity to resign. Hudson asked for twenty-four hours in which to consider this matter, which privilege was granted him, and he accordingly appeared alone at the office of the undersigned at 8 A. M. this date, October 28th, Hudson stated that he did not care to resign, and added that if he was to be dismissed from the service that he be given a hearing with representatives of his choice. When asked as to who he intended to have represent him, he suggested Harper, Walker and Brannin, the two former being the former general representatives of the B. of R. C. and the latter the local chairman of that organization at Houston. The undersigned explained to Hudson that he could not be repe-

537 sented by either Hopper nor Walker since they were no longer connected with this company and that he could be represented by Brannon only as a fellow employee and not as an officer of the

former B. of R. C. He stated he would then choose some body else and was cautioned by the undersigned not to delay getting together his representatives if he still desired a hearing. Hudson returned to the office of the undersigned at about 11:00 A. M. October 28th, and asked for letter stating why he was dismissed. He was offered a service letter which would explain the cause of his dismissal but stated that he did not want that but would return later with his representation.

(Signed) E. A. O'DONNELL.

Personal Record Bureau, Oct. 28, 1927.

Bishop Gergory Hudson.

Clerk-Local Frt. Station, Houston.

Discharged attempting to obtain free transportation through misrepresentation.

Nov. 4, 7 Sup Terminals Div.

Form 2350

Change in Employees.

To Mr. E. A. O'Donnell Supt. Termls. No.....
Date Effective: Month Oct. Day 28, Year, 1927, Hour
Name in full (No initials) Incoming ..... Outgoing B. G. Hudson.
Occupation (State Fully) Bill & O. S. & D. Clerk
Location Hou Frt Sta position is
Old or New—Old—If Temporary, for how long:
Permanent or Temporary—Permanent
Change For: First-named is

538 (If incoming employee is re-employed, reinstated, new employee or regular employee resuming work, so state without bail)

Second-named is Discharged
Reason for Change: Discharged Atting to obt. fr Tr
Amount of Bond Remarks: $500.00.
Dated 10/30/27.

(Singed) J. A. SANDERS,
Agt. Jdg.

Brotherhood of Railway Clerks.

Houston Lodge No. 28.

910-½ Preston Ave.

Houston, Texas, November 1st, 1927.

Mr. E. A. O'Donnell,
Supt. Terminals Houston Terminal Division
Houston, Texas.

Dear Sir:

Clerk B. G. Hudson employed at the Houston Local Freight Station as Bill and O. S. & D. Clerk was dismissed from the service Friday October 28th, 1927.

Clerk Hudson feels that he has been unjustly treated in his dismissal and respectfully requests that he be granted a hearing under Article 4 Rule 27 Section A of the agreement signed between the Brotherhood of Railway Clerks and the Management of the Southern Pacific Lines, dated at Houston, Texas, dated July 1st, 1922.

539 Will you kindly advise the undersigned when and where it will be convenient to have the requested hearing?

Respect. Yours,
H. W. HARPER,

General Chairman, Room 403
Cotton Hotel, Houston,
Texas.

CC B. G. Hudson.

Dismissal of Clerk B. G. Hudson:

Houston, Texas, November 25, 1927.

Mr. E. A. O'Donnell
Supt., Houston.

Dear Sir:

Your letter November 2nd, relative to dismissal of Clerk Hudson account falsification of transportation request. Kindly let me have the loan of your entire file in this matter, which will be returned to you within a few days. Would appreicate your letting me have same by return mail.

Yours truly,

Asst. to V. P. & G. M.

6-k

Be it remembered that upon the trial of the cause first above numbered and styled, upon the hearing upon the merits and for permanent injunction, on the 12th, 13th, 14th and 15th, day of March, A. D. 1928, before Hon. J. C. Hutcheson, Jr., the following evidence was adduced, to-wit:

540 Complainants' Evidence in Chief.

Complainants introduced in evidence this part of the second paragraph of defendants' answer to the original bill of complainant as shown on page 2 thereof:

"It admits that the individual respondents named, except the respondents F. C. Ehlinger, J. C. McDaniel, and C. W. Derrington are officers and agents of respondent. It alleges that said respondents, Ehlinger, Derrington and McDaniel are clerical employees of respondent and not officers or agents. It denies that said Ehlinger, McDaniel and Derrington exercise supervisory or directory power of authority over respondent's employees, but it admits that the other individual respondents do exercise such power and authority, but in their capacity as officers and agents of respondent. * * * *"

Complainants next introduced the second article of the original bill of complaint, and the second article of the first amended bill of complaint, which the part of the answer just quoted refers to, for the purpose of showing what is admitted:

(Second Article of original Bill of Complaint.)

"Defendant Texas & New Orleans Railroad Company (herein sometimes called the 'railroad company') is a corporation, organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business in the City of Houston, Harris County, Texas, within the Southern District of Texas, Houston Division and within the jurisdiction of
541 this Honorable Court and engaged in the business of a common carrier by railroad and the owner and/or operator of all the Southern Pacific Lines in Texas and Louisiana and the employer of all the persons in whose behalf this suit is brought and prosecuted. In this connection plaintiff says that said defendant Texas & New Orleans Railroad Company has since

March 1, 1927, and now is the common carrier and railroad company by and through which each and all of the other railroad companies formerly constituting what was and is commonly known and called 'Southern Pacific Lines' in Texas and Louisiana are now operated and controlled; that the exact terms and conditions of said arrangement are unknown to plaintiffs but are well known to defendants. A. D. McDonald, a citizen and resident of the City of New York, New York County, New York, is the president of the said Texas & New Orleans Railroad Company; H. M. Lull, a citizen and resident of the City of Houston, Harris County, Texas, is the Executive Vice-President of the Texas and New Orleans Railroad Company; G. S. Waid, a citizen and resident of the city of Houston, Harris County, Texas, is the Vice President and General Manager of the Texas & New Orleans Railroad Company in Texas; R. C. Watkins, a citizen and resident of New Orleans, La., is the Vice-President and General Manager of the Texas & New Orleans Railroad Company in Louisiana; J. G. Torian, a citizen and resident of the City of Houston, Harris County Texas, is the
542 Assistant to Vice Presidents and General Managers Waid and Watkins of said Texas & New Orleans Railroad Company, in both Texas and Louisiana; F. H. Bednark, a citizen and resident of the City of San Antonio, Bexar County, Texas, is assistant Superintendent of the Texas & New Orleans Railroad Company, Houston Division; J. A. Pryor, a citizen and resident of the City of San Antonio, Bexar County, Texas, is the supervisory agent of the Texas & New Orleans Railroad Company, Houston Division; C. E. Armstrong, a citizen and resident of the City of Houston, Harris County, Texas is assistant Agent, Houston Freight Station, of

Texas & New Orleans Railroad Company; and P. C. Gebhart, a citizen and resident of the City of Dallas, Dallas County, Texas, is the local Freight Agent of the Texas & New Orleans Railroad Company at Dallas. The names of each and all of the defendant Division Superintendents, Assistant Division Superintendents, trainmasters, yardmasters, special agents and other officers and agents of the defendant Texas & New Orleans Railroad Company exercising supervisory and directory powers and authority over the plaintiff employees of said defendant Texas & New Orleans Railroad Company are not set forth herein as they are unknown to the plaintiffs and cannot be ascertained by plaintiffs but are well known to defendants and form a class fairly represented by the named defendants. J. C. McDaniel is a citizen and resident of the City of Houston, Harris County, Texas, C. W. Derrington is a citizen and resident of the City of Houston, Harris County, Texas, and F. C.
543 Ehlinger is a citizen and resident of the City of Ennis, Ellis County Texas, and each and all of said three defendants are employees of said defendant railroad company preforming duties and services partly of a clerical nature but in truth and in fact each and all of them have certain powers and authority over some or all of the plaintiff employees of defendant railroad company; that acting with the defendants are certain other employees whose exact identity is unknown to plaintiffs but is well known to defendants, and said three last named defendants, together with said others who are unknown to plaintiffs are acting for and on behalf and with the other defendants and said three named defendants together with their unknown associates from a class of persons with a common and general interest in the subject matter of this suit. The defendants whose

names are not set forth herein are not so specifically named for the reason set forth hereinabove that their exact identities are unknown to plaintiffs and their exact number and exact identity are so subject to change and fluctuation that it is impracticable to bring them before the Court by name."

(Second Article of First Amended Original Bill of Complaint.)

"Defendant Texas and New Orleans Railroad Company (herein sometimes called the 'Railroad Company') is a corporation, organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business in the City of Houston, Harris County, Texas, within the Southern Dis-
544 trict of Texas, Houston Division and within the jurisdiction of this Honorable Court, and engaged in the business of a common carrier by railroad and the owner and/or operator of all the Southern Pacific Lines in Texas and Louisiana and the employer of all persons on whose behalf this suit is brought and prosecuted. In this connection plaintiffs say that said defendant Texas and New Orleans Railroad Company has since March, 1927, and now is the common carrier and railroad company by and through which each and all of the other railroad companies formerly constituting what was and is commonly known and called 'Southern Pacific Lines' in Texas and Louisiana are now operated and controlled; that the exact terms and conditions of said arrangement are unknown to plaintiffs but are well known to defendants. The officers, agents and employees of the Texas and New Orleans Rialroad Company made defendants herein solely in their capacities as such

officers, agents and employees, are those officers, agents and employees of said Texas and New Orleans Railroad Company having and exercising executive, directory and/or supervisory powers over the affairs and business of said defendant railroad company, especially over said railway clerks in the employ of said Texas and New Orleans Railroad Company in the States of Texas and Louisiana. The names of each and all of them are not set forth herein for the reason that their exact identities are unknown to plaintiffs and their exact number and exact identity are so subject to change and fluc-
545 tuation that it is impracticable to bring them before the Court by name."

Complainants next introduced in evidence part of the fourth article of the answer to the original bill of complaint, which refers to the fourth article of the original bill of complaint, which reads as follows:

"Respondent admits that it has executed with the complainant Harper certain memoranda evidencing the fact that certain rules and working conditions have been from time to time, and are, in effect between respondent and its clerical employees, other than general office employees, and that said memoranda were signed on or about the dates alleged in the bill of complaint."

Complainants next introduced in evidence a part of the fourth article of the original bill of complaint, referred to above, which reads as follows:

"On July 1, 1922, the plaintiff Brotherhood, after extended negotiations with the defendant railroad company and proceedings before the United States Railroad Labor

Board, in all of which the plaintiff Brotherhood and its officers were the sole representatives of the plaintiff employees, entered into a binding written contract entitled 'Rules Covering all Clerical and Station Employees, except general office Forces Southern Pacific Lines in Texas and Louisiana' ,which covered all the working rules and coditions under which the plaintiff
546 employees were to continue in the employ of said defendant Railroad company. Said contract was signed for the defendant railroad company by said J. G. Torian and for the plaintiff employees by the Plaintiff Brotherhood, under the signatures of its General Chairman, Vice-General Chairman and General Secretary-Treasurer, as their sole representative. Except for certain amendments as to overtime and calls, Sunday and holiday work, vacations and sick leaves, which were agreed to in the form of a written contract between defendant railroad company and the plaintiff Brotherhood as the sole representative of plaintiff employees on May 9, 1924, after further extended negotiations between the representatives of said defendant railroad company and the representatives of plaintiff Brotherhood and further proceedings before the United States Railroad Labor Board in which the representatives of plaintiff Brotherhood were the sole representatives of plaintiff employees, the aforesaid rules have remained in full force and effect since July 1, 1922, are still now in full force and effect and binding upon the parties thereto * * *".

Complainants next introduced that part of the Fifth Article of defendants' answer to the original bill of complaint, which reads as follows:

"It admits that it has in a lawful manner encouraged the same," referring to the Association of Clerical Employees.

547 Complainants next introduced that part of the Fifth Article of the answer to the original petition, which reads as follows:

"It admits that divers of its agents and employees have spoken favorably with respect to said associations of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana."

Complainants next introduced this further part of the same article of the same answer, which reads as follows:

"It admits that J. G. Torian Assistant to its Vice-President and General Manager, acting as such, wrote and transmitted the letters or substantially the letter set forth in subdivision or Section 5 of the Bill of Complaint, and alleges that the representations therein contained are true."

Complainants next introduced that part of Article five of the original bill of complaint, which reads as follows:

"Said Torian, as representative of said defendant Texas and New Orleans Railroad Company, has caused for the purposes hereinabove referred to, letters bearing dates of June 17, and June 24, 1927, to be circulated among the said railway clerks and/or to be posted upon the bulletin boards of said Texas & New Orleans Railroad Company at various points in the States of Texas and Louisiana, of which letters the following are correct copies or substantially so:

548 'Propaganda being circulated by General Committee of the Brotherhood of Railway Clerks: Houston, Texas, June 17, 1927.

Personal

Mr. C. R. Morrill Supt., El Paso,

Mr. A. D. Mims, Supt., San Antonio,
Mr. G. B. Goodloe, Supt., Victoria,
Mr. H. J. Micksch, Supt., Houston,
Mr. E. A. O'Donnell, Supt., Houston,
Mr. R. M. Glover, Supt., Lafayette,
Mr. P. B. Torian Supt., New Orleans,
Mr. B. S. Hollimon, Supt., Ennis,
Mr. J. H. Walsh, Supt., Austin,
Mr. R. R. Wood, Gen. Storekeeper, Houston,
Mr. J. T. Connor, Supt., T&NO Shops, Houston,
Mr. J. S. Netherwood, Asst. Supt. MP&E, Algiers

Gentlemen:

I enclose copy of a printed circular that is being circulated by the Organization of the Brotherhood of Railway Clerks, apparently for the purpose of misleading our clerical and station service employees and creating a wrong impression in order to secure their signatures. The misleading character of the numerous circulars recently sent out by this organization is aptly illustrated by the second paragraph of the circular enclosed herewith, the evident purpose of which paragraph is to convey the impression that mediation proceedings on the wage request filed by the organization of the Brotherhood of Railway Clerks has been going on since June
549 2nd. This is entirely untrue. We have been meeting with a member of the United States Board of Mediation since June 3rd, but have handled only cases involving employees other than the clerical employees. The case filed with the Board by the Organization of the Brotherhood of Railway and Steamship Clerks has not been reached in conference and has not been gone into with the member of the United States Board of Mediation. On request of the Mediator handl-

ing the negotiations here, conferences were postponed yesterday in order that he could attend the annual meeting of the Board which is to be held in Washington on June 27.

The purpose of the misleading circulars referred to above is quite evident and you are at liberty to show this letter to any of our clerical employees who are interested in the matter.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.'

'Propaganda being circulated by General Committee of Brotherhood of Railway Clerks:

Personal. Houston, Texas, June 24, 1927.

Mr. C. R. Morrill, Supt., El Paso, Texas.
Mr. A. D. Mims Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksch, Supt., Houston, Texas.
Mr. E. A. O'Donnell, Supt., Houston, Texas.
550 Mr. R. M. Glover, Supt., Lafayette, La.
Mr. P. B. Torian, Supt., Nw Orleans La.
Mr. B. S. Hollimon, Supt., Ennis, Texas.
Mr. J. H. Walsh, Supt., Austin, Texas.
Mr. L. B. Wood, Gen. Storekeeper, Houston, Texas
Mr. J. T. Connor, Supt., T&NO Shops, Houston Texas.
Mr. J. S. Netherwood, Asst. Supt., MP&E, Algiers, La.

Gentlemen:

I enclose a copy of circular letter issued June 18, by General Chairman Harper of the Brotherhood of Railway Clerks and copy of letter from Mediator Neff, which

is referred to therein. The circulars and bulletins being sent out by this committee are of such an undignified and abusive character that they are beneath our notice, but a number of the statements made are intentionally misleading and if not corrected would create a wrong impression. The evident purpose of the circular of June 18, that is enclosed herewith, is to create in the minds of our clerical and station employees an impression that the demands of the Railway Clerks Organization have been taken up with us by Governor Neff, representing the United States Board of Mediation and that mediation proceedings were begun and are under way. This is not true.

We met Governor Neff and were in conference for about twelve days, going into detailed discussion of two cases that involved other classes of employees and did not involve the clerks organization. We did not complete the discussion of these two cases and the
551 case of the Railway Clerks organization which was third on the list, was not reached and was not taken up in conference, except that we advised the Mediator that when that case was reached in regular order we would take the position that the organization of the Brotherhood of Railway Clerks did not have the authority of a majority of our employees to represent them.

Would advise further that I have had a communication from a member of the committee representing the clerical employees who desire to handle their affairs direct with the management and I will meet that Committee as soon as the organization of the committee has been completed.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M."

Complainants next introduced in evidence verification of the same answer to the original bill of complaint, sworn to by L. H. Cecil, reading as follows:

"State of Texas,
County of Harris.

L. H. CECIL, being duly sworn, deposes and says:

I am Assistant to the Executive Vice President of the Texas and Louisiana Lines of Texas and New Orleans Railroad Company and as such, have the knowledge and authority necessary to the making of this affidavit in behalf of said company; that I have read the foregoing answer, know the contents thereof, and that the
552 matters and things therein alleged are true and as to the matters therein alleged on information and belief, affiant believes them to be true.

(Signed) L. H. CECIL.

Sworn to and subscribed before me on this the 13th day of August, A. D. 1927.

O. G. KEHRER,
Notary Public in and for Harris County, Texas."

Complainants next introduced in evidence that part of the Fifth Article of the First Amended Original Answer to the complaint, which reads as follows:

"It admits that it has encouraged the said Association," referring to the Association of Clerical Employees, and the "It" referring to the Texas and New Orleans Railroad Company.

Complainants next introduced in evidence the following part of the Fifth Article of the First Amended Original Answer:

"It" (meaning the Texas and New Orleans Railroad Company) "admits that divers of its agents and employees have spoken favorably with respect to said Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana."

Stipulation: The respondent admits that it is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business in the City of Houston, that it owns and leases and operates various kinds of railroad
553 in and between the States of Texas and Louisiana, and that it is a common carrier of freight and passengers for hire.

Complainants next introduced in evidence the following portion of the affidavit of J. G. TORIAN, filed in the office of the Clerk of this Court on July 28, 1927;

(Defendants objected to the introduction of these portions of the affidavit of the witness Torian for the reason that while Torian was originally a party to the suit at the time that affidavit was made and was involved in it, that at this time he was out; and that as this record now stands he is just an individual witness or a person who has been acting for the defendant and who is an employee of the defendant; that although he is present here in Court they propose to offer his ex parte affidavit instead of putting him on the stand and examining him. That while it is true defendant railroad company fostered

said affidavit at the time it was filed in this cause and put it in evidence at that time, yet it stands out as a separate individual act of Torian's as an individual testifying through affidavit in the case. That said railroad company does not raise any objection to the use of Torian's affidavit but excepts to the admission of the portion of the affidavit offered by complainant.)

"My name is John G. Torian, I am and for ten years past have been, a resident of the City of Houston, Harris County, Texas. I am Assistant to the Vice President and General Manager (both in Texas and Louisiana) of Texas and New Orleans Railroad Company,
554 a corporation, which owns and operates and leases and operates lines of railroad within and between the States of Texas and Louisiana. My duties consist principally in dealing with relations between said Company and its employees in the matter of wages, working conditions, grievances and similar matters, which are usually discussed and disposed of by representatives of organizations of employees, on the one hand, and by representatives of the railroad company, on the other. * * *

And the further portion of the same affidavit which reads as follows:

"The plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees Southern Pacific Lines in Texas and Louisiana, was first officially recognized as an organization representing railway clerks employed by Texas and New Orleans Railroad Company and other Southern Pacific Lines by virtue of Supplement No. 7 to General Order No. 27 of the Director General of Railroads, which was effective on September 1, 1918."

Also that further portion of the same affidavit which reads as follows:

"There are now employed on the lines operated by Texas and New Orleans Railway Company approximately 1855 clerical employees, exclusive of the general office employees, hereinbefore referred to."

And that further protion of the affidavit which reads as follows:

555 "The officers of the Association have tendered to affiant, in his official capacity, written authorizations claimed to be held by the Association of a majority of the said clerical employees, but affiant, acting for Texas and New Orleans Railroad Company, has declined to receive or act upon the same until a certain pending request for certain changes in rates of pay, made by the Brotherhood and recently the subject of mediation between said Railroad Company and said Brotherhood, shall have been disposed of or dismissed by the United States Board of Mediation, represented, in this matter, by Hon. Pat M. Neff, a member of said Board.

"When the said pending matter shall have been disposed of or dismissed by the said United States Board of Mediation, it is the purpose of affiant to consider the said request and the said alleged authorizations of the Association and thereupon to treat with and to consider, as representatives of the clerical employees of Texas and New Orleans Railroad Company, said organization, provided it shall have authority to act for and to represent a majority of its clerical employees.

"Said Brotherhood has no contract or agreement whatsoever with said Texas and New Orleans Railroad Company, nor have the clerical employees, other than the general office employees, of said Railroad Company any contract or contracts whatsoever with it, save and except certain memoranda bearing date of July 1, 1922, (hereunto attached, marked Exhibit No. 1) and May 16, 1924, (hereunto attached, marked Exhibit No. 2)"

556 Complainant in connection with the above quoted portions of the affidavit, introduced in evidence copy of Rules attached to said affidavit, Marked Exhibits 1 and 2, and referred to in said affidavit,—these Rules having been hereinbefore set out in the bill of exception on the hearing for preliminary injunction in this cause, and are here now referred to and made a part hereof.

Complainant next introduced the following portion of said Torian's affidavit:

"And said Texas and New Orleans Railroad Company has no purpose or intention to suspend or modify any of the rules set forth in said documents, save and except by agreement with the representatives of its said clerical employees or save and except as it may be authorized by law, and this irrespective of whether the Association or the Brotherhood shall hereafter represent said clerical employees. Said Texas and New Orleans Railroad Company has never recognized the Brotherhood as the representative of its said clerical employees, save and except as required to do by decisions of the United States Railroad Labor Board, No. 1971, rendered December 21, 1923, and No. 2138 rendered February 21,

1924, and it is not, and has never been, the purpose or intent of said Railroad Company, or its predecessors in the ownership or control of the properties now operated by the Railroad Company, to recognize or deal with said Brotherhood, except as required to do so by the decisions aforesaid, which will be of no
557 further force or effect in the event the said Association shall present to said Railroad Company evidence that it is authorized to represent a majority of the said clerical employees; that while it is provided in the rules hereinbefore referred to that should either the employees or the management desire to revise or modify the same, thirty days written advance notice, containing proposed changes shall be given and conference shall be held immediately upon the expiration of the said notice, it is not provided in said rules, and has never been agreed upon by the Railroad Company, that the Brotherhood shall continue to represent the clerical employees for any period whatsoever after they may have ceased to represent a majority of the clerical employees."

Complainants further offered that portion of the same affidavit, which reads as follows:

"Many of the officers and employees of the Railroad Company, and particularly the officers and employees the work of whose departments or stations is most directly affected by loyalty, industry and interest in the welfare of the Company on the part of clerical employees, other than those in the general offices, have a strong interest in the selection by said employees of an organization to represent them which will endeavor, as they believe and as affiant believes the Association will do,

to co-operate with their employer and to deserve rather than to demand, without deserving, favorable action in the matter of wages and working conditions.

558 Nevertheless, most of said officers have not interfered, by word or deed, between the Association and the Brotherhood in the efforts of both to secure members or authorizations to act for employees. Several of said officers and employees have and, unless and until it shall be declared unlawful for them to do so, (as affiant believes) intend to continue by advice, reasonable argument and presuasion to present to said employees the advantages, as they see it, of said employees being, becoming or remaining members of the Association rather than of the Brotherhood, and beyond this no officers of the Railroad Company have gone or, as affiant is informed and verily believes, intend to or will go. The officers who have so acted are not above the rank of Assistant Superintendent, and the employees not above the rank of Agent.

"Said Railroad Company has not interfered and, as affiant believes, does not intend to interfere, one way or the other, in the action or non-action of any of said officers and employees."

Defendant thereupon introduced in evidence the remaining portions of the affidavit of John G. Torian, to which offer plaintiff objected on the ground that the portions offered by complainant were offered as admissions, and that the remainder of the affidavit would be self-serving declarations upon the part of the defendant, which objection was overruled by the Court and the remaining portions of the affidavit were per-

559 mitted to be introduced as explanatory of the portions introduced by complainant.

Defendant thereupon introduced in evidence the complete affidavit of JOHN G. TORIAN, dated July 28, 1927, as follows:

My name is John G. Torian. I am, and for ten years past have been, a resident of the City of Houston, Harris County, Texas. I am Assistant to the Vice President and General Manager (both in Texas and Louisiana) of Texas and New Orleans Railroad Company, a corporation, which owns and operates and leases and operates lines of railroad within and between the States of Texas and Louisiana. My duties consist principally in dealing with relations between said Company and its employees in the matter of wages, working conditions, grievances and similar matters, which are usually discussed and disposed of by representatives of organizations of employees, on the one hand, and by representatives of the Railroad Company on the other.

I am entirely familiar with the several matters and things involved in the above entitled and numbered cause.

The plaintiff, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, was first officially recognized as an organization representing railway clerks employed by Texas and New Orleans Railroad Company and other Southern Pacific Lines by virtue of Supplement No. 7 to General Order No. 27 of the Director General of Railroads, which was effective on September 1, 1918.

560 Said organization originally claimed to represent, or have the right to represent, all clerical employees of the Southern Pacific Lines in Texas and Louisiana, all said lines now being leased and

operated by Texas and New Orleans Railroad Company, but since the termination of Federal control of railroads it has been determined that said organization has not the right of representing, and it does not now pretend to represent, any of the clerical employees in the general offices at Houston, Texas, or New Orleans, Louisiana, and falling within said classification. There are now employed on the lines operated by Texas and New Orleans Railroad Company approximately 1855 clerical employees, exclusive of the general office employees, hereinbefore referred to, and an organization known as Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, which is a voluntary association, claims to represent a majority of said employees under written authorizations from such majority. This organization is hereafter referrered to as 'Association.' The complainant in this proceeding is hereinafter referred to as 'Brotherhood.' The Brotherhood also claims to represent a majority of said employees. The officers of the Association have tendered to affiant, in his official capacity, written authorizations claimed to be held by the Association of a majority of the said clerical employees, but affiant, acting for Texas and New Orleans Railroad Company, has declined to receive or act upon the same until a certain pending request for certain changes in rates of pay, made by the Brotherhood and recently subject of mediation between said Railroad Com-
561 pany and said Brotherhood, shall have been disposed of or dismissed by the United States Board of Mediation, represented, in this matter, by Hon. Pat M. Neff, a member of said Board.

When the said pending matter shall have been disposed of or dismissed by the said United States Board of Mediation, it is the purpose of affiant to consider the

said request and the said alleged authorizations of the Association and thereupon to treat with and to consider, as representatives of the clerical employees of Texas and New Orleans Railroad Company, said organization, provided it shall have authority to act for and to represent a majority of its clerical employees.

Said Brotherhood has no contract or agreement whatsoever with said Texas and New Orleans Railroad Company, nor have the clerical employees, other than general office employees, of said Railroad Company any contract or contracts whatsoever with it, save and except certain memoranda bearing date July 1, 1922, (hereunto attached, marked Exhibit No. 1) and May 16, 1924, (hereunto attached, marked Exhibit No. 2,) and said Texas and New Orleans Railroad Company has no purpose or intention to suspend or modify any of the rules set forth in said documents, save and except by agreement with the representatives of its said clerical employees or save and except as it may be authorized by law, and this irrespective of whether the Association or the Brotherhood shall hereafter represent said clerical employees. Said Texas and New Orleans Railroad Company has never recognized the Brotherhood as the representative of its said
562 clerical employees, save and except as required to do so by decisions of the United States Railroad Labor Board, No. 1971, rendered December 21, 1923, and No. 2138, rendered February 21, 1924, and it is not, and has never been, the purpose or intent of said Railroad Company, or its predecessors in the ownership or control of the properties now operated by the Railroad Company, to recognize or deal with said Brotherhood, except as required to do so by the decisions aforesaid, which will be of no further force or effect in the event the said Association shall present to said Rail-

road Company evidence that it is authorized to represent a majority of the said clerical employees; that while it is provided in the rules hereinbefore referred to that should either the employees or the management desire to revise or modify the same, thirty days written advance notice, containing proposed changes, shall be given and conference shall be held immediately upon the expiration of the said notice, it is not provided in said rules, and has never been agreed upon by the Railroad Company, that the Brotherhood shall continue to represent the clerical employees for any period whatsoever after they may have ceased to represent a majority of the clerical employees.

The Brotherhood has at all times been extremely radical in its attitude and has made and presented unreasonable demands on the Railroad Company and, while its officers have conducted themselves, and still conduct themselves, as acutely hostile to the interests of the Railroad Company, the Railroad Company has not undertaken to cause the formation of the Association
563 and has never interfered with, influenced or coerced, or attempted to interfere with, influence or coerce the clerical employees with respect to membership in either the Brotherhood or the Association. Many of the officers and employees of the Railroad Company, and particularly the officers and employees the work of whose departments or stations is most directly affected by loyalty, industry and interest in the welfare of the Company on the part of the clerical employees, other than those in the general offices, have a strong interest in the selection by said employees of an organization to represent them which will endeavor, as they believe and as affiant believes the Association will do, to co-operate with their employer and to deserve rather

than to demand, without deserving, favorable action in the matter of wages and working conditions. Nevertheless, most of said officers have not interfered, by word or deed, between the Association and the Brotherhood in the efforts of both to secure members or authorizations to act for employees. Several of said officers and employees have and, unless and until it shall be declared unlawful for them to do so, (as affiant believes) intend to continue by advice, reasonable argument and persuasion to present to said employees the advantages, as they see it, of said employees being, becoming or remaining members of the Association rather than of the Brotherhood, and beyond this no officers of the Railroad Company have gone or, as affiant is informed and verily believes, intend to or will go. The officers who have so acted are not above the rank of Assistant Superintendent, and the employees
564 not above the rank of agent.

Said Railroad Company has not interfered and, as affiant believes, does not intend to interfere, one way or the other, in the action or non-action of any of said officers and employees.

Affiant denies that any coercion whatsoever has been used by any officers of the Railroad Company with respect to the matters herein contained or any other matters affecting the relations between the Railroad Company and its said clerical employees.

Affiant wrote and transmitted to the parties addressed letters in substance as set forth on pages 23, 24 and 25 of the bill of complaint filed herein. Said letters were intended to be made public by the parties to whom they were addressed for the purpose of contradicting and counteracting numerous erroneous statements of fact which were persistently made and circu-

lated by the Brotherhood and its officers. Said letters correctly set forth the facts and, in somewhat general terms, the intentions of affiant and of the Railroad Company in this matter.

It is not a fact that, should a majority of the clerical employees of the Railway Company, other than those in general offices, elect to be represented by the Association and should affiant and the Railroad Company deal with the Association and not with the Brotherhood, the clerical employees now members of the Brotherhood will be forced to withdraw from membership therein or that the Brotherhood will, of necessity, be dissolved. In fact, any employee of the Railroad Company may be a member of any organization irrespective of whether the Railroad Company has
565 contracts or deals with said organization or not.

With respect to the allegation in the bill of complaint alleging refusal to issue passes to a nominal employee on the alleged ground that he is a member of the Brotherhood, no employee has been refused passes because of membership in any organization, the Brotherhood included, but the issuance of passes is a matter of grace and is properly dependent, to a certain extent, on the nature of the work, satisfactory or otherwise, of the employee requesting such favor and, in fact, the general rules of the Railroad Company with respect to passes provide that officers will decline to issue passes for employees who have not shown zeal in the discharge of their duties.

Complainant next introduced in evidence the following portion of another affidavit by said JOHN G. TORIAN, dated July 28, 1927:

"It is a fact that the 1855 clerical employees, referred to in my former affidavit filed in this cause, include the approximately 110 employees constituting personal office force of such officers as division engineer, trainmaster, master mechanic or their equal or superior in official rank."

And a further portion of the same affidavit, which reads as follows:

"Seniority rules, however, do not apply to them solely for the reason that on account of the confidential nature of their duties they are and, of necessity, must be selected for their personal qualifications and
566 without regard to seniority.

"As a matter of practice, however, such confidential employees do not ordinarily belong to labor organizations which are, in the opinion of the Railroad Company, hostile to it and to its business interests—this for obvious reasons."

Defendant next introduced in evidence the complete affidavit of JOHN G. TORIAN, dated July 28, 1927, as follows:

I have read copy of affidavit of H. W. Harper and John W. Walker, both dated July 28th, 1927, in the above entitled and numbered cause.

It is a fact that the 1855 clerical employees, referred to in my former affidavit filed in this cause, include the approximately 110 employees constituting personal office force of such officers as division engineer, trainmaster, master mechanic or their equal or superior in official rank. Said personal office force employees are

in fact clerical employees whose rates of pay are regulated and adjusted in accordance with rates of pay of other clerical employees. They are selected from clerical employees in the service and may be transferred back to such original positions as ordinary clerical employees. Seniority rules, however, do not apply to them solely for the reason that on account of the confidential nature of their duties they are and, of necessity, must be selected for their personal qualifications and without regard to seniority.

As a matter of practice, however, such confidential employees do not ordinarily belong to labor or-
567 ganizations which are, in the opinion of the Railroad Company, hostile to it and to its business interests—this for obvious reasons.

With respect to agreement stated in said affidavits as having been made otherwise than as required by decisions of the United States Railroad Labor Board: Those agreements merely extend and modify the schedules or rules promulgated by the United States Railroad Labor Board and referred to in affiant's original affidavit.

The position of chief clerk to the superintendent of Texas and New Orleans Railroad Company and the position of Chief Yard Clerk are purely and simply clerical positions. Said chief clerks exercise no authority whatsoever by virtue of their positions outside their immediate offices and within their immediate offices their powers are limited to distribution and supervision of the work. They have not the power to employ and discharge without the approval of the Superintendent. They sometimes, however, act in routine matters in the name of the Superintendent and may act in other matters by his delegation.

Complainant next introduced in evidence the following portion of the testimony of G. S. WAID, taken on November 23, 1927, upon the hearing of the contempt motion in this cause, to which defendants objected on the ground that the witness is present in the Court Room as a witness and could be used as a witness if desired; that the testimony there taken would be hearsay so far as this case is concerned and not the best evidence, this being a hearing on the merits
568 of this case. Which objection of the defendants was overruled by the Court, to which action of the Court the defendants excepted.

Stipulation: It is admitted that the transcript of the witness' testimony taken on said hearing is true and correct.

G. S. WAID, on direct examination, testified as follows:

Questions by Mr. Crooker:

Q. You are Mr. G. S. Waid and you are identified, I think, sufficiently to the Court and in the record, Mr. Waid, so that I won't ask you any other preliminary questions. You have occupied this same official position with the railroad company for quite a few years, dating back continuously up to the present time?

A. Yes, sir.

Q. Mr. Waid, I want to inquire, please sir, briefly, of you with respect to your custom and practice of this defendant railroad company and its officers in the matter of granting transportation, passes, over the railroad company's lines, to representatives of different railroad

brotherhoods with which your company has dealings and representing the employees, different classes of employees on your lines. You understand what I want to know. What is the custom, briefly?

A. Our policy is very well defined in that matter. We recognize the organizations with whom we deal and grant transportation to the officers of those organizations pending satisfactory service and conduct. We have many cases of record in which for one reason or another we have discontinued the countesy or privilege—

569 Q. (Interrupting) If you don't mind, let's get in the general custom first and then if there are exceptions to it, we will take them up a little later.

A. I have stated, I think, what the general custom is.

Q. And the custom is, as I understand you, to grant transportation to the representatives of railroad brotherhoods and representatives of the different crafts and classes of employees employed by your lines?

A. As long as they hold their positions and fill them satisfactorily and properly, we do that.

Q. Now, don't you give them rather lengthy and in some cases at least indefinite leave of absence for those purposes?

A. We do in the case, or have done so in the case of some of them older organizations and in some of them we are not quite so liberal.

Q. But as a matter of policy, the Brotherhood of Firemen, we will take, for instance, or Conductors or Trainmen, or some of the so-called railroad brotherhoods, those men who are selected as general officers of these different railroad brotherhoods are usually granted leaves

of absence from the railroad company's employment, aren't they?

A. If you use the term "general officers" as meaning employees of our company engaged in the service of the general committee on our lines, yes.

Q. Well, that is what I mean, yes.

A. If you want me to go into that now I will be very glad to do so and tell you that in the case of firemen—

Q. (Interrupting) But I don't want the de-

570 tails.

A. Well, it is quite important that we do that in order to bring out our policy.

Q. Well, if you deem it important, Mr. Waid, I will be glad to have you do it.

A. We had the case of a general chairman by the name of Barr who represented the Firemen's organization on our lines for many years, carrying seniority, and he was furnished transportation. A few years ago he was advanced in his organization to the position of vice-president, and of course his services were not directly or indirectly connected with our service. We served notice on him that his seniority had been cancelled and that we declined to give him further transportation. Mr. Barr was quite insistent and anxious that he be carried on our seniority list and we gave him the privilege of transportation. That has been so until day before yesterday a brotherhood man, a fellow member of his organization, called upon me endeavoring to induce me to reverse my position in the matter and permit Mr. Barr to retain his seniority and the privileges that go with it. I explained to him that our policy was very well defined in those matters and that I could not do that. We had another case—

Q. (Interrupting) Mr. Waid, now I will let you tell that other one but while we are on Barr, may I not get this from you: Barr was a fireman on the Southern Pacific Lines, oh, some, dating back 25 or 30 years ago, wasn't he?

A. You mean a fireman,—you mean his occupation?

Q. Yes.

571 A. He was first a Fireman and then later an Engineer.

Q. He represented the Firemen's—

A. (Interrupting) Organization.

Q. Now, for how many years was he inactive, it began 25 years ago, didn't it?

A. I don't recall exactly.

Q. In round numbers?

A. Not far from that I would not say.

Q. You were with the Conductors about 25 years ago, weren't you?

A. Yes, sir.

Q. In a similar position?

A. Yes, sir.

Q. You always had transportation and leaves of absence, didn't you?

A. I finally did. The railroad company was not at first so liberal as they were later.

Q. Well, you got it out of them, didn't you?

A. Yes.

Q. All right. Now, Mr. Barr continued inactive so far as actually firing a locomotive and running one for some 20 or 25 years, did he?

A. Somewhere about that.

Q. And he had a leave of absence from the company continuous and more or less indefinite to perform the duties which from that time up till recently represented the Firemen on the Southern Pacific.

572 A. I don't believe that you could technically say that he had a leave of absence. He was permitted to assume those duties without loss of seniority.

Q. Well, his name, if he had lost his job with the Firemen, he would go back on the seniority list and would be entitled just as though he had been working every minute running an engine?

A. Correct.

Q. That he was entitled to a passenger engine or whatever that seniority entitled him to and he would get it, so that approximately 25 years, in round figures, he was engaged in inactive service and was engaged wholly in the matter of the Firemen's organization in reation to the matters connected between the railroad company and the Firemen on these Southern Pacific Lines?

A. Yes.

Q. And during all that time he retained his seniority, was kept on the roster of the railroad company employees with his seniority reserved and he had passes all during that period?

A. Yes, but—

Q. (Interrupting) I am going to get to that. Now, recently he was elected and in some manner became away from the Southern Pacific Lines and off up here at Cleveland or somewhere, at the headquarters, that is correct, isn't it, with the Firemen?

A. Yes.

Q. Now, then his relationship with the Southern Pacific Lines then—

A. (Interrupting) Ceased.

573 Q. His work ceased and he just left the railroad service entirely and became a railroad organization man up there with his headquarters in the east somewhere?

A. The organization would not like to hear you say that he left the railroad service.

Q. Well, the facts are, that is, your position is, anyway?

A. Ours is, yes.

Q. So that his duties were of a general nature over the country and related as much to the Pennsylvania and what not as it did to the Southern Pacific Lines and upon that theory you canceled his seniority and his leaves of absence and his pass, or did you cancel his pass?

A. Oh, yes, we did that. He ceased to be an employee and under the law we could not furnish him transportation.

Q. Now, you wanted to tell something else and I wanted to find out about it.

A. We had another case of a former chairman, an engineer, on our lines and a member of the organization of Engineers who took up work with the Interstate Commerce Commission as Inspector of Equipment. He asked for and received permission to absent himself from our direct service for the purpose of trying out that position and I allowed him to do that until he could make up his mind as to whether he wanted to resume service with us or stay with the United States Government. He finally decided that he would like to remain in the service of the Government as an I. C. C. Inspector and I had his name marked off the seniority list and his passes canceled.

Q. That is Taylor?

574 A. Taylor.

Q. Taylor?

A. Yes, sir.

Q. He just accepted other employment as a matter of choice and during the time that he was trying it out you permitted him an indulgence or privilege or rather an extended try-out, didn't you?

A. Yes, sir; I did.

Q. How long?

A. I think something over two years, probably, first one year, we only granted his leave of absence for one year.

Q. And then you extended it?

A. Yes, sir. Another case was a matter of the Conductors, I will not name him, a certain number of years ago he indulged in reprehensible practices in connection with the handling of his work and I called him in and made him leave the community and canceled his passes as a representative of the Conductors. However, as an employee, I allowed him to ride on the train.

Q. I will be as kind to him as you are. Let's see if I understand that, here was a man who was selected by his organization as their representative and he dealt with you on behalf of the company?

A. Yes.

Q. With respect to matters involving the Conductors' pay and hours and so on. Now, for some reason that you say was reprehensible conduct, that you were satisfied about, you did not want him to continue

575 in that work?

A. I refused to work with him.

Q. You refused to meet him at all and the upshot of that thing was that he gave that job up as representing his brothers?

A. I required him to.

Q. Anyway, he did do it, and he went on back and ran his train as a conductor, and of course he gets his regular employee's pass but he was not permitted any longer to stay off from the company and that was for some reprehensible conduct that neither of us think important to go into the details of. It satisfied you that it was reprehensible?

A. Satisfied him too.

Q. Well, I notice that upon your insistence and demand he went on and complied with it?

A. Yes. Those cases outline our policy in matters of that kind and the matter of denying transportation or rather denying employment or rather constructive employment to Mr. Harper and the matter of withdrawing transportation is just in line with our practice.

Q. I don't object to them bringing that out but I am not asking about Mr. Harper.

A. I thought you were.

Q. Now, I am asking you, please sir, and I am confining my questions entirely to the railroad company's practices with respect to the general custom and you answered it, I believe?

A. Yes.

Q. May I ask you this, just offhand, you know of no other instances except the two, I am leaving
576 Harper and Walker out now, I am not inquiring about them, except those that you have outlined to the Court?

A. Except that in the case of an organization setting a man aside and re-electing somebody else, it applies.

Q. Well, that would be for the very obvious reason that there was not any occasion, if his organization did not want him to represent them any longer, then you would not, of course, just let him go over here and clerk at Levy's?

A. No, I mean about transportation.

Q. Well, you would not let him remain inactive any longer, you would either make him go back to work or take his name off of the seniority rolls, wouldn't you?

A. Yes, sir. I have found that necessary in several cases.

Q. Now, Mr. Waid, for what length of time was the Brotherhood of Railway Clerks' representative given transportation over your lines and leaves of absence?

A. I really don't recall. They came into existence on our lines during Federal Control and I presume from that time on.

Q. Oh, wasn't they before that? Weren't they in 1918, wasn't it nine years ago to refresh your recollection about it?

A. '18 and '19 were Federal control years.

The Court:

The period of Federal Control was in 1918 and '19.

Mr. Crooker:

Yes, that is correct. I was not catching the similarity.

Q. Anyway, during the nine year period then, from approximately 1918 up to this summer, the
577 Brotherhood of Railway Clerks' representatives had their leaves of absence from their customary duties with their names kept on the seniority

rolls and they had their pass privileges just like other Brotherhoods similarly situated, just like the other representatives of Brotherhoods?

A. That may be true and probably is.

Q. Well, as far as you know?

A. As far as I can say definitely.

Q. I say, as far as your know it is true?

A. I do recall that one of their chairmen on not being re-elected by their organization, we required him to return to the service.

Q. Well, that was in line with the policy that you have already outlined?

A. We cut off his transportation and he preferred taking service with the Ku Klux Klan in San Antonio and he never did come back to our service as far as I can recall, and of course his transportation was canceled.

Q. You gave him the privilege of coming on back to work at his regular job?

A. We insisted that he do so.

Q. And since he was not performing the other duties that you had let him off for from his actual service any longer, that was the reason for that. Well, independent of that, during the nine years period from the summer of 1918 up to the summer of 1927, the representatives of the Brotherhood of Railway Clerks enjoyed those privileges of grace or indulgence or whatever you may call it, just like the other representatives of the other Brotherhoods, that is correct, isn't it?

578 A. I think that we may assume that that is correct.

Q. Yes. Mr. Waid, some questions may occur with respect to an organization which has not a majority of employees of a given class over your entire system over which you have control and yet has a majority at a particular point. Isn't such a condition and doesn't such a condition exist with respect to the contract in the Beaumont yards between the Trainmen and the Switchmen, or does it?

A. I don't just know what your question applies to but the Beaumont Yards, I will explain the situation there. In the Beaumont Yards we have a contract with the Switchman's Union of North America and they have a majority of the men employed there in their organization.

Q. Now, then generally you haven't any other contract over your system with them, have you?

A. No, sir; the Brotherhood of Railway Trainmen have the contracts in the other yards on the system.

Q. So that, generally speaking, the Brotherhood of Railroad Trainmen have a majority of all of the men employed in your yard service, that is switchmen, over your whole railroad, haven't they?

A. They have seniority and the rights of the men in the Beaumont yards are confined to Beaumont. They have elected to become members of the Switchmen's Union of North America, and they have a majority, and I think yet have a majority of the employees in that organization, and we have contractual relations with them. On the other parts of the system the B. R. T. has.

379 Q. Notwithstanding the fact then, if you count up all of your yard men, I am talking about the switchmen on your whole system, then the Trainmen would represent an overwhelming majority?

A. Oh, they would have a great many more men over the whole system. In the Beaumont yards the B. R. T. have no look in. They have no right to anything in Beaumont because we had a contract with the S. U. that was entered into so far back that I don't know when it was and notwithstanding the B. R. T. has tried to beat them out a good many times we have always maintained the integrity of their contract there.

Questions by the Court:

Q. Are there any persons in this Clerical Association who occupy positions or who are in the same situation that Harper and Walker were as to being out of the active service but retained on the seniority list?

A. I think temporarily they are engaged in the work they had in hand but it is my understanding, although I don't know just what their intentions are, that they will have no so-called paid chairmen. Their duties will only require them looking after the Brotherhood affairs and they will not be required to perform duties—

Q. (Interrupting) There will be no persons or there are not now, I understand, any persons in this clerical association, who either get passes or have seniority—

A. (Interrupting) Oh, yes, they retain their seniority and they are entitled to transportation.

Q. I thought you said they also were not?

A. I said they temporarily were not working.

580 I think they intend to return to work.

Q. So there are persons who now occupy the same positions that Harper and Walker would?

A. By virtue of their employment and their service they are entitled to such transportation as they need anyway.

Q. What I mean is this, there are persons who are not on the regular pay of the company?

A. I don't know whether their pay has been—

Q. (Interrupting) You don't know whether they are on the pay roll or not?

A. No, sir; they are old employees, however, and have acted recently in trying to promote the interest of the organization they represent.

Q. They are not doing any actual work for the company?

A. Not at this time.

Q. You don't know whether they are still on the payroll or not?

A. No, sir; I don't.

Q. You assume they are, do you?

A. I am rather inclined to believe they are.

Q. Isn't that a very unusual situation for the company to have men active like that, not doing any work and still carrying them on the pay roll?

A. No, we frequently detach men from the service for the purpose of handling matters that are for the general good. For instance, we send men to an organization for fuel conservation every year.

Q. I don't mean that, I mean in these employees' organizations, was there ever a case before
581 where the railroad company kept a representative of the employees on the payroll and allowed them to stay there without working? Not any case before?

A. Oh, I presume there has been where they were doing work that worthy of such consideration.

Q. I know, but the work they are doing now is not worthy of any consideration by the company, it is not company work?

A. Yes, it is very much in the interest of the company to secure a proper representation of interests and I should think that the company would be very much interested in that.

Q. So these men really are working for the company in organizing and promoting this association?

A. No, I wouldn't say that they are so employed.

Q. What do you say?

A. They merely go so far as I know—

Q. (Interrupting) What I mean, you said that they were doing work which is greatly to the interest of the company in promoting and insuring friendly organizations, that is correct?

A. Yes, that is correct. We feel so.

Q. And that you are maintaining them still on the payroll in order to enable them to do that?

A. I have not said that they are on the payroll.

Q. I am asking you.

A. Because I have not gone into that.

Q. But I suppose you can furnish us that information?

A. I suppose I could. In fact, I am sure I could.

The Court:

I would like to have it.

Mr. Crooker:

May I help him with this Torian affidavit about that?

582 Questions by Mr. Crooker:.

Q. You are familiar with Mr. Torian's affidavit filed here and I believe you swore to it too. I am not certain whether you swore to this one or not, but I have before me an affidavit filed in this case and

made by Mr. Torian, who is your assistant, and is the answer, or your answer to this motion for contempt of Court in which you allege that up to the present time your company has made no deduction whatever from the pay of officers of the Association of Clerical Employees on account of whatever, if any, time they have lost from the discharge of their duties?

A. That may be true.

Q. And as far as you know it is true?

A. I don't know whether it is or not.

Q. Well, that is your answer to this Court?

A. I don't think I swore to that.

Q. Well, I don't know whether you did or not. I think you did, really.

Mr. Tallichet:

If it will clarify the situation, I will say that I got the information not from Mr. Waid but from Mr. Torian that we have made no deductions whatever from the pay of the men. As to their being detached from their duties, I know nothing of that.

Mr. Waid:

I am testifying of my own knowledge and I have stated that I can't testify as to whether or not it has been done.

Mr. Crooker:

Well, I think counsel's statement will clarify it.

583 Mr. Tallichet:

If the answer is on file why I take it it will not require proof if you don't challenge it.

Mr. Crooker:

Well, we don't chalenge it if you don't.

The Court:

That's all right; if it appears from any source that it is a company admission, it don't make any difference.

Q. Don't you know that this man D. D. Wade is doing little if anything else except this so-called Clerical Association work?

A. I really don't know.

Q. You haven't missed him in Court since you have been here; he has been here every time you were here?

A. I don't recall seeing him here but once. I don't hardly know the man himself.

The Court:

Well, that is argument. He would have to be here as a witness.

Mr. Tallichet:

I want to cross-examine him, of course, only on the matters that have been gone into here on direct.

The Court:

All right.

Mr. Tallichet:

You referred to the issuance of passes to officers of the labor organizations with whom you have—

The Court (Interrupting):

One matter I wanted to ask you about. Let's see if I understood that question. Probably it is in that affidavit. I will just ask you. This affidavit of Mr. Torian

and Mr. Waid, (Mr. Lull didn't sign it) does it show the reasons why the passes were taken from Walker and Harper and their seniority rights also taken from them? Does it state the ground there?

584 Mr. Tallichet:

It simply states that one of them had been on leave of absence four years or about and the other about two years and, as I recall it, that when other organizations ceased to represent the men, as we viewed it, that the right to recognition ceased and then the passes ceased too.

The Court:

I assumed from the way he was testifying generally that would be the reason he would give for that situation. If it is in the affidavit, no use going into it.

Cross Examination (In Part).

By Mr. Tallichet:

Q. In other words, it is not customary, or is it or not customary to extend that pass privilege to secretaries or general secretaries?

A. Yes, it has been done.

Q. In what instances?

A. I think the Secretary of some of the other organizations have.

Q. It has been done. In recognized positions?

A. Have been granted transportation.

(By Mr. Crooker):

Q. Mr. Waid, whatever your custom may have been with respect to the exact services performed by these different labor organization representatives, it did include for several years, and as far as you know from 1918 up to this summer, it included men performing services like Harper and Walker, didn't it?

A. It did Harper. I am not sure as to Walker.

Q. Well, Walker had a pass, didn't he?

585 A. I think he did.

Q. Yes.

A. But I don't think it goes back to '18.

Q. Well, no, because he was not working for the company, he was not in this position that long.

(By Mr. Tallichet):

Q. Do you know of your own knowledge on what account Walker had a pass?

A. Not of my own knowledge. I assume he had a pass because he was Chairman—

Q. (Interrupting) That is what you as-

586 sume, but do you know? I am asking you if you know?

A. No, I do not.

Mr. Tallichet:

The facts are that he had it, it was probably a conditional pass on account of some service and not on account of being secretary.

(By the Court):

Q. Are there ever any instances on the railroad like this, where there would be two organizations claiming to represent persons who are employees in which during

the period of the controversy the seniority rights of both representatives were maintained?

A. I don't recall any such controversy ever coming up before.

Q. The Clerks' is the only controversy of this kind you ever had on your road?

A. I know that prior to the 1922 Shop Strike we recognized the National Organization, so-called, an American Federation of Labor concern, and with them leaving our service, a company association was formed, and those men were given consideration that had formerly been granted to the National Organization, and the National Organization was deprived of those privileges.

Q. When they ceased the work—during the period of time when this controversy had been going on, the present one, was there a part of that time when the Brotherhood represented by Harper and Walker was denied by you, or their claim that they had authority was denied, that you had a controversy over that before the Board?

A. They claimed the right to represent the
587 men and the demand for increased pay and changed rules, and so forth, and growing out of our inability to reach an understanding and agreement with them, and intermediary was called in in the form of Governor Neff—

Q. (Interrupting) I don't mean just recently, but I mean years back when you had that hearing before the Labor Board?

A. What was the question then?

Q. Wasn't there a period of time when you were denying the right of these persons to represent the Clerks?

A. Oh, yes; yes, sir.

Q. During that time did you deny the seniority and the passes of the representatives?

A. I think so, until the matter was decided. We felt then, and later knew, that they did not carry a majority representation of the men. They had a majority of those who voted, those not in the organization not taking the trouble to vote. Since that time they have lost membership, and the unorganized men have been dissatisfied with their work and have banded themselves and formed an organization which is greatly in the majority, in my opinion, over the membership of the so-called union, probably 2 to 1, or probably 3 to 1, I don't know whether it is 3 to 1.

(By Mr. Tallichet):

Q. Did we, or not, continue the status as to passes and the retention of the seniority lists until after the time when, according to the judgment of the company, a definite decision had been made as to who represented the men?

A. I will have to state my belief in that, and not my exact knowledge, as I was absent at the time,
588 but I think that is true.

Mr. Tallichet:

Subject to your objection.

Mr. Crooker:

I don't make any. On the contrary, I don't think we alleged the date, but I think, for instance, Harper was separated from your company, according to his personal record, on September 24th.

Mr. Waid:

Probably so.

Mr. Crooker:

This is a copy of the excerpt from the personal record which your company keeps, I think.

Mr. Waid:

I haven't seen this document.

The Court:

Well, there is no dispute about that, gentlemen. Both of you are agreed.

(By Mr. Crooker):

Q. You do keep a personal record of these employees?

A. Yes, sir.

The Court:

What are you arguing about? Mr. Tallichet says it did not happen until afterwards, and you are saying the same thing.

Mr. Crooker:

Yes, but I am—there is a record entered for the reason, after the termination here, and I am just asking him if that is not the copy. If this is not the copy, then I think you can get it.

The Court:

Is that the reason?

Mr. Crooker:

Yes, sir; that is the reason I want to ask him about it. Assigned here is the reason, "has performed no service for company since June 24, 1923, and is dropped

from the roster of employees." That, we say, is what is entered in your records. Now, if it is not in
589 accordance with that, will you get the true records?

The Court:

Let it go that way, subject to the right to dispute it.

Mr. Waid:

I would not attempt to dispute it because I believe it is correct.

(By Mr. Crooker):

Q. Neither Harper nor Walker were offered the opportunity of, and nobody said anything to them about, returning to active service, were they, so far as you know?

A. No, I can't testify to that, I am sorry to say. A good many of these things happened during my absence and I don't know just what transpired.

(By Mr. Tallichet):

Q. During your absence and illness?

A. Yes, sir; I was away from the first of July until the 15th of September.

The Court:

What is the idea now, you have given him over and turned him loose.

Mr. Crooker:

Well, Your Honor, this September 24th matter, we allege in here, and I just want to ask him if it is not true that your Superintendent issued a bulletin to conductors on August 12th to take up Harper's annual pass? Now if that is not true, and if that is not a copy of that?

A. I don't know whether that is a true copy or not, but I know that instructions were issued to do that, that he was not entitled to transportation under the law or under our rules, and he, I believe, declined to turn in his transportation upon request, and it was necessary to take those steps.

590 (By Mr. Crooker):

Q. Now, will you say that anybody requested him for it?

A. How's that?

Q. Will you say anybody requested that his transportation be turned in. Will you say that anybody requested Harper to be turned in?

A. It is my understanding that he was so requested.

Q. At least, you don't know it of your own personal knowledge?

A. No, I want to make that clear, that I am stating what I believe rather than what I know.

Q. Now, Mr. Waid, if there is any explanation or any facts that you can get about the matter, that you can get with reference to why a bulletin was issued, copy of which I am showing you, on August 12th, to take up Harper's pass, and why his services, that is on August 12th, and his services were not terminated with the company until September 24th like this record shows, if there is any explanation of that, I want you to get it for us.

A. I imagine the record is the date upon which it was made up. The action may have been taken against him much earlier than that.

Q. Well, have you got any record or any memorandum, or anything you can bring to the Court to show?

The Court:

Who signed the letter, that is the man to know?

Q. Well, have you got a R. M. Glover who is Superintendent at Lafayette?

A. Yes, sir; he is Superintendent there.

Q. Now, you can find out right here in Houston in a short time whether or not Glover really issued that kind of orders to all conductors, can't you?

591

A. I stated before that I don't know whether he did or not, but I know that instructions were issued to put out such an order.

Q. Who issued them?

A. I did. I told Mr. Torian to arrange it.

Q. Some time prior to August 12th, as near as you know?

A. No, not then, because I wasn't here at that time.

Q. Well, if it was issued on August 12th, wasn't it sometime prior to August 12th that you told Mr. Torian to arrange it?

A. I think I will have to retract that; he did it on his own initiative, but I approved of it.

Q. All right. Did you instruct then that he be dropped from the roll?

A. No, I think not. I think that all took place while I was away.

Q. But you can't tell us anything why these instructions to take up the pass could have been issued on August 12th and dropping him from the roll did not occur till September 24th except to say that it was in process but had not been entered yet?

A. I think that is a full explanation of it.

(The document containing instructions to take up pass was marked Exhibit 21.)

592 Defendant thereupon introduced in evidence the remainder of said witness' testimony, which is as follows:

(By Mr. Tallichet):

Q. I was asking about passes for "officers", you used the particular term "officers", is that correct, or is it confined to "General Chairmen" as a rule, or do your know, if you do know?

A. I tried to make that distinction clear by saying that it was those officers occupying the position of General Chairmen who had service on our lines, constructive service.

Q. In other words, it is not customary, or is it not customary to extend that pass privilege to secretaries or general secretaries?

A. Yes, it has been done.

Q. In what instances?

A. I think the Secretary of some of the other organizations have.

Q. It has been done. In recognized positions?

A. Have been granted transportation.

Q. Is it customary to continue the leave of absence and the privilege of passes after an organization may have ceased to represent a majority or be recognized?

A. It is not.

Q. Is that the reason why this was cut off?

A. Certainly.

Q. And the revocation of passes?

A. Yes, sir.

Q. Legally and necessarily follow the dropping of the man from the seniority list?

593 A. Yes, sir.

Q. And from the constructive, being constructive employees?

A. Yes, sir.

(By Mr. Crooker):

Q. Mr. Waid, whatever your custom may have been with respect to the exact services performed by these different labor organization representatives, it did include for several years, and as far as you know from 1918 up to this summer, it included men performing services like Harper and Walker, didn't it?

A. It did Harper. I am not sure as to Walker.

Q. Well, Walker had a pass, didn't he?

A. I think he did.

Q. Yes?

A. But I don't think it goes back to '18.

Q. Well, no, because he was not working for the company, he was not in this position that long.

Complainants next introduced in evidence a portion of the affidavit of F. C. EHLINGER, sworn to on July 27, 1927, as follows:

"I have seen the affidavits of W. R. Turk and of R. H. Collins, employees in the Local Freight Office of said Texas and New Orleans Railroad Company at Dallas, attached to the bill of complaint filed in this suit, and while, with a few exceptions, they are substantially correct, they require the explanation that neither of said parties is subordinate to me and
594 the statement of W. R. Turk to the effect that he is subordinate to me is not in accordance with the facts.

"Reference made by me to the question of vacation—"

Defendants thereupon offered the remainder of said affidavit (of F. C. Ehlinger), which is as follows:

My name is F. C. Ehlinger and I am a resident of Ennis, Ellis County, Texas, and have been for six years. I have been in the service of Texas and New Orleans Railroad Company and other Southern Pacific Lines for fourteen years, beginning November, 1913, as Construction Timekeeper. I am now chief clerk in the superintendent's office at Ennis, Texas.

I am a member and am General Chairman of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

I am familiar with the history of said organization and with its purpose. Said organization had its origin in March, 1923. In a letter written by me to the Chief Clerks of the various Superintendents of the Southern Pacific Lines in Texas and Louisiana I proposed an organization of members of personal office forces and division office clerks, including division accounting bureau, dispatcher's office, division engineer's office and master mechanics office, to the end that we might deal with the management in the matter of rates of pay, working conditions, etc., wholly separate and apart from the organization of Brotherhood of Railroad Clerks, with

595 which I was dissatisfied and with which I was advised many others were dissatisfied, it being my view and the view of many others that a less radical organization was extremely desirable and that co-operation with the officers of the Company rather than antagonism was desirable. Practically one hundred per cent of the clerical employees within the limits above mentioned became members of the proposed organization, which communicated the fact of its forma-

tion and purposes to the management of the Company. We were then informed by Mr. J. G. Torian, Assistant to the Vice-President and General Manager, that under the law the management was compelled to deal with all clerical employees, outside of general office forces, as one class and could not deal with the forces in the superintendent's offices separately from station clerks and other clerical forces. As a result of this advice we, that is, the members of the organization referred to, undertook to extend, and did extend, the membership to all clerical employees on the Southern Pacific Lines in Texas and Louisiana, outside of and except general office employees, that is, employees in the general offices of the Company at Houston and at New Orleans.

We secured a large membership, amounting to a substantial majority of all employees of the Southern Pacific Lines in Texas and Louisiana entitled to membership, and we thereupon requested the management of said Southern Pacific Lines and of said Texas and New Orleans Railroad Company to recognize our organization as the organization representing a majority of such employees. The management, in view of the
596 declared policy of the United States Railroad Labor Board in such matters, caused a secret ballot to be taken of the clerical employees, outside of general office clerks, to determine whether they wished to be represented by the Brotherhood of Railway Clerks or the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. There were a total of 1635 such employees entitled to vote. Of these 1073 voted, of whom 611, by their ballot, favored the Brotherhood of Railroad Clerks and 462 favored the Association of Clerical Employees. The question whether this ballot should override our majority of the signed

authorizations went before the United States Railroad Labor Board and was decided on September 21, 1923, by Decision No. 1921 of said Board, that the majority of the ballots cast would control.

Accordingly, said Brotherhood of Railroad Clerks continued to represent the clerical employees, outside of the general offices, and the Association became dormant. Nevertheless, the extremely radical character of the Brotherhood of Railroad Clerks remained exceedingly distasteful to me and to many other of the clerical employees of the Southern Pacific Lines and we have, accordingly, determined to revive, and have revived, the Association of Clerical Employees, Southern Pacific Lines, in Texas and Louisiana, which is now an active organization.

I am not an official of Texas and New Orleans Railroad Company or of the other Southern Pacific Lines in any sense and am eligible to membership in either of the organizations above referred to. My activity in
597 the revival of and securing members for said Association is purely personal and is not at the direction or suggestion of any officer of said Texas and New Orleans Railroad Company.

I have seen the affidavits of W. R. Turk and R. H. Collins, employees in the local Freight Office of said Texas and New Orleans Railroad Company at Dallas, attached to the bill of complaint filed in this suit, and while, with a few exceptions, they are substantially correct, they require the explanation that neither of said parties is subordinate to me and the statement of W. R. Turk to the effect that he is subordinate to me is not in accordance with the facts.

Reference made by me to the question of vacation was for the purpose of drawing out from Turk the fact that, notwithstanding the fact that provisions for vacations promulgated by the United States Railroad Labor Board are now contained in the rules, the agent has a great deal to do with determining whether or not a vacation may be taken by any particular man or at any particular time.

I did not state to either of said parties that I had any assurance, direct or indirect, that the Association would obtain increases in pay, but I did state that I believed, as I do in fact belief, that the Brotherhood of Railroad Clerks has a membership paying dues of only about 20 per cent of the total employees of these Lines entitled to membership, and that because of the small number of employees really represented, and because of the radical and arbitrary methods adopted by said organization in attempting to deal with the Railroad Company, it would not be able to get any substan-

598 tial pay increase or other benefits from the Company, except perhaps by appeal to the highest tribunal, whereas I believed, and do believe, that the Association, approaching the matters referred to in a spirit of co-operation, would be able voluntarily to obtain benefits for the employees which the more radical organization could not obtain. I also told all employees with whom I talked that I wished them to forget that I was Chief Clerk to the Superintendent and to regard me simply as a clerical employee on the division who was attempting to benefit all employees in that capacity, and, finally, that I wished them to act on their own judgment—that if they really favored the Brotherhood of Railway Clerks, I did not want them

to sign, but if they really did not favor the Brotherhood of Railway Clerks, that I hoped that they would become members of the Association.

With respect to interviewing clerks during office hours: This has also been frequently done by officers of the Brotherhood of Railroad Clerks, particularly by General Chairman H. W. Harper, of that organization.

Complainant next introduced in evidence the following portion of the affidavit of C. W. DERRINGTON, sworn to on the 28th day of July, A. D. 1927:

"In some instance I have asked agents and assistant agents of the Railroad Company to assist me in endeavoring to secure members for the Association and in some instances this assistance has been rendered."

599 Whereupon, defendants then introduced in evidence the remainder of said affidavit, which reads as follows:

I have been served with subpoena in the above entitled and numbered cause.

I am a resident of the City of Houston, Harris County, Texas, and am Chief Clerk in the office of Superintendent, Terminals Division. I have resided in the City of Houston for nine years and I have been employed by Texas and New Orleans Railroad Company and other Southern Pacific Lines for fourteen years.

I am what is known as a clerical employee, other than general office clerical employee, and am eligible to membership in either the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana, or the Brotherhood of Railway and Steamship

Clerks, etc. I am in fact a member, though not an officer, of the Association of Clerical Employees. As a member of this organization I have endeavored, and am still endeavoring, to secure, by persuasion and fair argument, but not by coercion or any other means, members for said Association.

I have done so of my own motion and in co-operation with other members and officers of the Association and not at the instance or request of Texas and New Orleans Railroad Company or of any of its officers.

I have read the affidavit of J. C. McDaniel and F. C. Ehlinger dated July 27, 1927, and I hereby reiterate the general statements therein contained.

In some instances I have asked agents and assistant agents of the Railroad Company to assist me
600 in endeavoring to secure members for the Association and in some instances this assistance has been rendered. I have felt justified in asking for this assistance because of what appears to me the unfair methods used by the officers of the Brotherhood of Railway Clerks in endeavoring to secure authority to represent employees. As an example, I attach hereto, and marked it Exhibit No. 1 and make it a part of this affidavit, a printed form which is being circulated by the Brotherhood of Railway Clerks, which devotes a great deal of its space to questions whether the clerical employees desire increases in pay and at the end in a very unobtrustive space contains an authorization to the said Brotherhood of Railway Clerks to represent parties who are requested to sign same.

Complainant next introduced in evidence that part of F. C. EHLINGER'S affidavit, above referred to, reading as follows:

"I have seen the affidavits of W. R. Turk and of R. H. Collins, employees in the Local Freight Office of said Texas and New Orleans Railroad Company at Dallas, attached to the bill of complaint filed in this suit, and while, with a few exceptions, they are substantially correct, * * *"

Complainant also introduced the following portion of said affidavit:

"Reference made by me to the question of vacation was for the purpose of drawing out from Turk the fact that nothwithstanding the fact that provisions
601 for vacations promulgated by the United States Railroad Labor Board are now contained in the rules, the agent has a great deal to do with determining whether or not a vacation may be taken by any particular man or at any particular time."

Complainant next introduced in evidence for the purpose of rendering intelligible what Mr. Ehlinger is attempting and saying is true and not to supersede or take the place of the witness' testimony orally, certain portions of the affidavit of the witnesses Turk and Collins, as explanatory and by way of completion and supplementary to the Ehlinger affidavit.

To which offer of complainants defendant objects because it is hearsay and the witness is not present and subject to cross examination.

To which complainant replied that complainant offered only so much as relates to the conference at which Ehlinger was present.

The Court thereupon ruled that the affidavit would be admitted as explanatory of and as extending the affidavits of Ehlinger stated that what Turk and Collins said was correct. The Court ruled that the whole affidavit should be admitted.

W. R. TURK'S affidavit, sworn to July 19, 1927:

My name is W. R. Turk. I am employed as Car Clerk in the Dallas Local Freight Office of the Southern Pacific Lines. My position comes within the scope of the agreement between the Brotherhood of Railway Clerks and the Southern Pacific Lines in Texas and Louisiana.

Mr. George H. Gould is assistant agent for
602 the Southern Pacific Lines in the Dallas Local Freight Office, Mr. P. C. Gebhart is agent for the Southern Pacific Lines in their Dallas local freight office. Mr. F. C. Ehlinger is chief clerk to the Division Superintendent of the Dallas Division of the Southern Pacific Lines. As an employee and in my capacity as Car Clerk I am subordinate to Messrs. Gould, Gebhart and Ehlinger.

On or about June 5, 1927, I was told by Clerk W. R. Winn, that I was wanted on the carpet in Agent's office. I went into the Agent's office alone and there met Agent Gebhart and Chief Clerk Ehlinger. Gebhart greeted me with a statement substantially as follows:

"Turk, you remember, in 1922, there was a movement to organize a Clerical Employees' Association on these Lines. We are now trying to organize a similar organization and would like to know if you will sign up?" Mr. Ehlinger thereupon stated, that before going any

further he desired to state that he had every reason to believe that this would be the best movement clerks had ever made. He also stated that the management on several occasions had stated flatly that they would not give a raise to clerks, as long as they were represented by the Brotherhood of Railway Clerks, unless forced to do so and that then, it would not be for more than two or three cents per hour. On the other hand, he stated that he had been led to believe that we could readily get more than three cents per hour through the Clerical Employees' Association. I told them that I did not feel justified in signing their petition, as I had
603 always favored the Brotherhood of Railway Clerks, and looked to them for betterment of working conditions and wages. Mr. Ehlinger then asked me what benefits I had ever derived from the Brotherhood of Railway Clerks. I told him that we had received the 8-hour day, vacations, and increases in salaries. Mr. Ehlinger then asked me if I thought it would be possible for me to get a vacation if Gebhart opposed it. I replied that I did not know. Mr. Ehlinger then asked me, if I thought that we could get more money through the Brotherhood of Railway Clerks than we could through the Clerical Association since the management had stated that they would give nothing at all through the Brotherhood of Railway Clerks unless forced to do so. I replied that I certainly did. The conversation lasted perhaps twenty or twenty-five minutes, during which time Mr. Gebhart and Mr. Ehlinger discussed the matter with me frankly to the end that they might induce me to sign the petition which they had presented to me.

R. H. COLLINS' affidavit, sworn to July 19, 1927:

My name is R. H. Collins. I am employed as Chief Accountant in the Dallas local freight office, of the Southern Pacific Lines. My position comes within the scope of the agreement between the Brotherhood of Railway Clerks and the Southern Pacific Lines in Texas and Louisiana.

Mr. P. C. Gebhart is Agent for the Southern Pacific Lines in the Dallas local freight office. Mr. F. C. Ehlinger is Chief Clerk to the Division Superintendent of the Dallas Division, of the Southern Pacific
604 Lines. As an employee and in my capacity as Station Accountant I am subordinate to Messrs. Gebhart and Ehlinger.

On or about June 5, 1927, Clerk E. J. Schafer told W. E. Valentine and myself to report to Mr. Gebhart in his office. We went into the Agent's office and met Chief Clerk Ehlinger and Agent Gebhart. Mr. Ehlinger stated that he wanted to talk to us about this raise. He presented a petition for us to sign to the effect that we desired to renounce representation by the Brotherhood of Railway Clerks and support the Clerical Employees' Association; with the request that we sign. In his conversation he attempted to persuade us to sign the petition. As an inducement he stated that he was in a position to know that the Company would grant a greater pay increase through the Association than could be obtained by the Brotherhood of Railway Clerks. During the conversation Mr. Gebhart asked Mr. Valentine if he had ever misled him or had ever given him bad advice and suggested that it was to our interest to take his advice in this instance and sign the petition presented. The conversation lasted perhaps ten or

fifteen minutes, during which time the plain intent of their statements was to the effect that they desired to influence us into signing the petition which had been presented.

Complainant then introduced in evidence the following portion of defendant's amended answer to the information in the contempt proceedings, to which defendant objected unless the offer included four lines
omitted by the complainant in its offer. There-
605 upon defendant offered the four lines omitted to which plaintiff objected. The excerpt was admitted by the Court as follows:

(Offered by plaintiff.) "That the said J. G. Torian, acting for in behalf of said Railroad Company," (offered by defendant) "thereupon having determined fairly and lawfully that the said Association and its officers were entitled to represent and speak for and in behalf of the Clerical Employees,"—"wrote the said F. C. Ehlinger as General Chairman, a letter in substance as set out in subdivision I of the said information, and thereupon advised the several superintendents and other parties entitled to information with respect thereto of his action by letter substantially as set out in said subdivision I of said information.

"That, thereupon, pursuant to the general practice of said Railroad Company in such matters, the said parties addressed made public the fact of said recognition, the Superintendent at El Paso doing so by communication substantially as set out in said information, and other superintendents and officers charged with such duty following substantially the same course."

Complainant next introduced in evidence the following portion of Article I of the petition in the contempt proceedings:

"On or about August 6, 1927, the defendant J. G. Torian, assistant to vice-president and general manager G. S. Waid of said company, addressed a com-
606 munication for and on behalf of said defendant corporation to one F. C. Ehlinger, an employee of defendant railroad company holding a responsible and important position and employment under said railroad company at Ennis, Texas, said communication being as follows:

"Houston, Texas, August 6, 1927.

Representation Clerical Employees Other Than General Office Employees.

Mr. F. C. Ehlinger,
General Chairman,
Association of Clerical Employees,
Ennis, Texas.

Dear Sir:

The authorization which your committee hold to represent the clerical employees, other than General Office employees on these lines, that were presented to me at our conference yesterday as your authority for seeking conference with me have been carefully checked and in view of these authorizations and under Rule 56, Section (a) of the rules promulgated by the Railroad Labor Board, reading as follows:

Where the term "duly accredited representative" appears in these rules it shall be understood to mean the regularly constituted committee representing the class of employees on the railroad where the controversy arises, or any representative or representatives the employees directly interested may select or designate.

these Lines will recognize your committee as the representatives of the employees directly interested.

Yours truly,

697 (Signed) J. G. TORIAN,
Asst. to V. P. & G. M.'"

Complainant then introduced the following portion of the same instrument:

"That on or about August 9, 1927, the defendant J. G. Torian, assistant to vice-president and general manager G. S. Waid of said company, addressed a communication for and on behalf of said defendant corporation, transmitting to certain officials of said defendant railroad company a copy of his letter of August 6, 1927, addressed to the said Ehlinger, which said letter of August 9, 1927, is as follows:

Representation Clerical Employees Other Than General Office Employees.

Houston, Texas, August 9, 1927.

Mr. C. R. Morrill, Supt., El Paso, Texas.
Mr. A. D. Mims, Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksh, Supt., Houston, Texas.
Mr. E. A. O'Donnell, Supt., Houston, Texas.

Mr. R. M. Glover, Supt., Lafayette, La.
Mr. P. B. Torian, Supt., New Orleans, La.
Mr. B. S. Hollimon, Supt., Ennis, Texas.
Mr. J. H. Walsh, Supt., Austin, Texas.
Mr. J. T. Connor, Supt., T. & N. O. Shops, Houston, Texas.
Mr. J. S. Netherwood, Asst. Supt., M. P. & E., Algiers, La.
Mr. C. T. Davis, Supt., Creosote Works, Houston, Texas.
Mr. L. B. Wood, General Storekeeper, Houston,
608 Texas.
Mr. Percy Hewett, Supt. Telegraph, Houston, Texas.
Mr. D. H. Lusk, Mgr. Dining Car Dept., Houston, Texas.
Mr. M. H. Bonner, Special Agent, Houston, Texas.

Gentlemen:

"For your information and guidance I attach copy of my letter of August 6th, addressed to General Chairman Ehlinger of the Association of Clerical Employees advising that these Lines will recognize his committee as the duly accredited representative of the clerical employees of these Lines other than the General Office employees.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

Cc—Mr. G. S. Waid,
Mr. R. C. Warkings,
Mr. G. R. Cottingham,
Mr. C. K. Dunlap,
Mr. C. S. Fay,
Mr. L. B. McDonald,
Mr. T. H. Meeks,
Mr. O. C. Castle.

"That shortly after the receipt of said letter last referred to by the several superintendents and other officials to whom the same was addressed, said superintendents and other officials caused said letter to be given wide publication among the 1700 clerical employees em-
ployed by the defendant railroad company in
609 Texas and Louisiana, and described and referred to in said injunction. In this connection, it is represented to the Court that all, or practically all, of said superintendents and other railroad company officials to whom said letter of August 9, 1927, was addressed, reproduced large numbers of copies of said letter and caused them to be placed on various bulletin boards and in other public places at and around the stations and offices in which said 1700 clerical employees were engaged in their duties, a copy of the bulletin issued by C. R. Morrill, superintendent of said defendant railroad company at El Paso, being as follows:

"Southern Pacific Lines in Texas and Louisiana.
Texas and New Orleans Railroad Company.

Office of Superintendent.

El Paso, Texas, Oct. 1, 1927.
O18

All Concerned:

"For your information and guidance attach copy of a letter addressed to General Chairman Ehlinger of the Association of Clerical Employees, by Mr. J. G. Torian, Asst. to Vice-President and General Manager, under date of August 6th, advising that these lines will recognize his committee as the duly accredited representatives of the Clerical Employees of these Lines, other than the General Office employees.

"Please post for the information of all con-
610 cerned.

(Signed) C. R. MORRILL,
Superinendent.

25

Cys all Agents:

Messrs. W. R. Mann, W. Bleick, W. S. Ford, D. B. Herbert, J. E. Marshall, S. B. M. Jones, J. H. Knowles, T. S. Stewart, P. H. Lancaster, J. C. Hunt, E. D. Dumas, Roundhouse Foreman, El Paso, Va, SO DR, Eagle Pass, Roadmasters, El Paso, Marfa, Del Rio, Spofford."

Complainant next introduced in evidence the following portion of the second article of the same answer in the contempt proceedings:

"They allege that they, or some of them, on or about August 30, 1927, entered into an agreement with the said F. C. Ehlinger, as General Chairman, A. G. Baker, as Vice Chairman, and Douglas D. Wade, as General Secretary-Treasurer of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana, of the purport of the substantial copy of said agreement set forth in said information."

Complainant next introduced in evidence as explanatory of and as showing what is actually admitted the following portion of the second article of the
611 petition in the contempt proceeding:

"On or about August 20, 1927, the defendant J. G. Torian, Assistant to the Vice-President and General Manager of said defendant railroad company, entered into an agreement concerning wages and compensation for said clerical employees."

Complainant next introduced in evidence the wage agreement contained in the petition in the contempt proceedings as follows:

Memorandum of Agreement Between the Railroads and Association, omitted from the printed record, being heretofore copied at page 104.

* * * * * * * * *

613 Complainant next introduced in evidence the following portion of the second article of the amended answer in the contempt proceeding:

"They allege that they, or some of them, had the correspondence set out in said subdivision II of said information with various officers or employees of the United States Board of Mediation."

(Corresponndence referred to is as follows:)

"Houston, Texas, August 2, 1927.

"Hon. Samuel E. Winslow, Chairman,
U. S. Board of Mediation, Earl Bldg.

"Case filed with Board by Brotherhood of Railway Clerks your file C dash hundred and six has been handled in mediation with Mediator Neff. Stop. Settlement not affected through mediation whereupon Mediator proposed arbitration which was declined. Stop. It is our view that failure to agree to arbitration at once and automatically terminates connnection of Mediators with the case and will be glad to have you confirm relinquishment of jurisdiction of the matter as we believe we are in position to bring about immediate settlement of case with the authorized representatives of our clerical employees.

(Signed) G. S. WAID.

614 Washington, D. C., August 3, 1927.

"Mr. G. S. Waid, Vice-Pres. and Genl. Mgr.,
Southern Pacific Railroad (Texas Lines),
Houston, Texas.

"Response your telegraphic inquiry your view that failure to agree to arbitrate at once automatically terminates connection of Mediators with case appears in error. Stop. Only effect of such action up to this time has been postponement with resumption subsequently at more appropriate time. Stop. Our board has not relinquished jurisdiction in any case thus far when its services have been properly invoked until matter has been amicably adjusted. Stop. If parties in difference which in this case are your company and Brotherhood of Railway and Steamship Clerks find it possible to compose differences themselves our Board will be glad to receive written request from both said parties that the case be withdrawn. Stop. Our Board very willing to comply such request but your statement quote authorized representatives of our clerical employees unquote does not make clear whether party instituting this case is comprehended in your suggestion.

(Signed) JOHN MARRINAN,
Secretary, Board of
615 Mediation."

"Houston, Tex., Aug. 4, 1927.

"John Marrinan, Secretary,
United States Board of Mediation,
Washington, D. C.

"Your message third replying to our second to Chairman your Board. Stop. While Governor Neff has been as helpful as possible and has done everything possible to bring about adjustment difference with cleri-

cal employees it is clear to us and we believe recognized by him that nothing further can be done with case presented by Brotherhood of Railway and Steamship Clerks. Stop. This organization does not represent a majority of our clerical employees and we will have no further dealings with them. Stop. We are satisfied that we can make amicable adjustment with association of clerical employees Southern Pacific Lines which does represent majority of clerical employees and it is the opinion of our counsel after careful consideration of the law that there is nothing in the law or in the present situation which can or should prevent us from reaching agreement with organization last mentioned. Stop. The inference in your telegram that we can deal only with Brotherhood of Railway and Steamship Clerks seems to us and to our counsel to be obstructive rather than helpful. Stop. We will therefore endeavor to work out solution satisfactorily to us and employees which we believe will be and which we are entirely certain should be satisfactory to Governor Neff who is entirely familiar with the whole situation. Stop. In view of this we still hope that you will see your way clear to advise that you have no objection to
616 our disposing of this question.

(Signed) G. S. WAID.

"Washington, D. C., August 4, 1927.

"Mr. G. S. Waid, Vice-Pres. and Genl. Mgr.,
Southern Pacific Railroad (Texas Lines),
Houston, Texas.

"Response your telegram this date regarding case file C one hundred six regret to advise that position of Board as communicated to you yesterday cannot be modified at this time.

(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation."

"September 28, 1927.
File C-106.

"Mr. A. D. McDonald, President,
Southern Pacific Railway Company,
Texas and Louisiana Lines,
2401 Beneson Bldg., 165 Broadway,
New York, N. Y.

Dear Mr. McDonald:

"By instruction of the Chairman I am communicating in an effort to clear up certain misunderstandings which appear to have retarded progress in the settlement of certain differences between your Company and the Brotherhood of Railway Clerks.

"Following a conference in New York be-
617 tween you and representatives of the Clerks' organization the same delegation visited our offices. President Fitzgerald reported to us that you entertained an impression, said to have been based upon reports to you from subordinates that Governor Pat M. Neff, the Member of our Board who handled this matter in mediation, had made certain statements which might have encouraged officials of your company to

abandon efforts to adjust the matters in difference. It was further represented to us that while you personally had manifested a clear disposition to comply with the letter and spirit of the Railway Labor Act, you believed it advisable to have this important factor in the case cleared up before any further moves were considered.

"Accordingly this office made a complete report to Governor Neff on the latter developments, copy of which is herewith attached, and has received his reply, also attached. It would appear from the record, as you will note, that you have been misinformed, if our report from the Clerks' representatives are accurate.

"The enclosures herewith forwarded make unnecessary a detailed review of the more recent developments in this matter. It appears sufficient to state that the Southern Pacific Company through its representatives in Texas has adopted a course in handling this case with [which] is not in conformity with our Board's understanding of correct practice under the Act. In all the circumstances set forth, and giving full credence to your re-
618 ported desire to discharge all the proper obligations of your Company under the Act, it is respectfully suggested that you co-operate by giving such instructions as may seem to be appropriate to officials of your Company in direct charge of these matters to the end that the services of our Board may be resumed in an effort to dispose of this matter amicably and on some basis acceptable to both parties.

Yours faithfully,

(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation."

"October 11, 1927, File C-106.

"Mr. H. M. Lull,
Executive Vice-President,
Southern Pacific Lines in Texas and La.,
Houston, Texas.

Dear Mr. Lull:

"I have at hand your letter under date of August 7th, in which you give consideration and make reply to certain recent efforts made by our Board to compose differences between your Company and the Brotherhood of Railway Clerks, our file C-106. Note is taken of some discrepancy between your understanding of the facts surrounding mediation and the understanding of Governor Neff who handled this matter at Houston. While this misunderstanding is of minor importance it is unfortunate that it persists because it is likely to have had some influence in shaping your attitude towards this problem.

"The opinion of your General Counsel that
619 the functions of the Board of Mediation have terminated appears in conflict with the views of Governor Neff and of our Board as communicated to you in our telegram of August 3rd, addressed to Mr. G. S. Waid. It is our understanding that a governmental agency charged with the administration of law has some voice in determining when its duties have been fully discharged under the law. If the parties subject to the provisions of law have the right to determine when Federal jurisdiction terminates, statutory provisions would lose all force.

"It is quite possible that in certain situations our Board will deem it wise to relinquish jurisdiction, but in this particular matter our Board has not yet taken such action.

"Your statement that telegrams addressed to our Board under date of August 2nd and 4th were 'not requests that the Board relinquish jurisdiction * * *' appears to be in error. A telegram from Mr. G. S. Waid addressed to Chairman Winslow under date of August 2nd, contains this language:

'Advise of your relinquishment of jurisdiction of the matter.'

"The record in this case indicates that on or about August 6th, your company negotiated an agreement with the Southern Pacific Clerical Employees' Association, effective August 16th, in which certain wage alterations over the previous existing schedule held by the Brotherhood of Railway Clerks were made. Section
620 6 of the Railway Labor Act contains in part, this language:

"'* * * In every case where such notice of intended change has been given or conferences are being held with reference thereto or the services of the Board of Mediation have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by Section 5 of this Act, by the Board of Mediation. * * *'

"Since our records disclose a request for mediation of a difference between your Company and the Brotherhood of Railway Clerks, who were then the holders of the schedule governing this class of employees on your property; since such application was declared eligible for mediation and the services of our Board extended; and since both a member of our Board on the ground and this office expressly indicated that the matter had

not been finally acted upon; we cannot concur in your conclusion that 'the provisions of Section 6 of the Act have no application.'

"In order that there may be no misunderstanding, your reservation of a right to contend that the Brotherhood of Railway Clerks by instituting suit against your Company and certain of its officers constituted 'breaking off of efforts to settle matters in dispute by mediation and a refusal to go into arbitration,' it appears desirable to make it a matter of record that the aforesaid injunctive process was employed by the
621 organization after your Company had declined all concessions in mediation and had positively refused to arbitrate. Of course, our Board did not participate in this latter proceeding in any way.

"In view of your concluding statement that it is the desire of the officials of the Southern Pacific Lines in Texas and Louisiana to discharge all their proper obligations under the Act, it is a matter of regret to our Board that some opportunity for amicable adjustment did not develop through our more recent efforts to resume mediation. It is evident that a controversy has existed and still exists between a considerable number of your employees in clerical service and your company. In compliance with its statutory duty our Board again respectfully urges you to join the clerks' organization in their expressed desire to submit this controversy to arbitration under the provisions of the Railway Labor Act.

Yours faithfully,
(Signed) JOHN MARRINAN,
Secretary, Board of
Mediation."

JM:ABL."

Complainant next introduced in evidence the following portion of the third article of the amended answer in the contempt proceedings:

"They allege that on or about September 6, 1927, a committee consisting of H. W. Harper and others called on H. M. Lull, Executive Vice-President of Texas and New Orleans Railroad Company, and requested him to recognize them as the representatives of the
622 clerical employees and that the said H. M. Lull declined to examine any papers which may have been offered him at said time, and declined and refused to overrule or supersede the action of J. G. Torian and of other officers of the Company in the premises."

Complainant next introduced in evidence in connection with the foregoing offer and as explanatory of and showing what the admission is, the following part of the third article of the petition in the contempt proceedings; plaintiff stating in this connection that only statements of facts which defendants have admitted are offered.

To which offer defendants objected because the pleading a portion of which was offered was a separate proceeding and an independent proceeding and because it is not here as an admission.

Which objection of defendants was overruled by the Court; to which defendants objected.

"On September 6, 1927, a committee of said Railroad Brotherhood consisting of H. W. Harper, general chairman, John W. Walker, general secretary-treasurer, C. A. Brandin, division chairman at Houston, J. C. Moulin,

eneral chairman and E. L. Griffith, local repre-
ive in the Houston Freight Warehouses, called
H. M. Lull, executive vice-president of said de-
nt railroad company at his offices in the Southern
ic Building, Houston, Texas, and discussed with
him the defendant company's refusal to con-
sider the authorizations which the Railroad
Brotherhood then held and now holds to repre-
the majority of said 1700 clerical employees of
defendant company in Texas and Louisiana, and the
nition by said company of the 'company union' or
p union' as duly accredited representative of said
al employees; said defendant H. M. Lull stated in
ance that the company had recognized the general
nittee of said 'company union' as being the sole
accredited representative of all the clerical em-
ees in the company's employ in Texas and Louisi-
except general office employees, and that neither
r any other officers of the defendant company would
any consideration to the claims of said Railroad
herhood to be or act as representative of said cleri-
employees; he further stated that the matter of rep-
ntation was a closed one so far as the defendant
oad company was concerned and that the company
its officers declined to participate in any kind of
nvestigation to determine the relative merits or the
ectness of the claim of the Railroad Brotherhood
the 'company union' to be the duly accredited repre-
ative of said clerical employees. The said Railroad
therhood committee thereupon stated that they were
and there ready to produce for examination by the
endant H. M. Lull genuine written authorizations
n approximately two-thirds of said clerical employees
represent them, but said defendant H. M. Lull de-

clined to examine said authorizations or to even consider any other evidence that the Railroad Brotherhood might have to show that it had the right to
624 act as the duly accredited representative of said clerical employees, but stated in substance that the company was satisfied with the claim of the 'company union' that it represented the majority of said clerical employees. Said Harper thereupon asked said defendant H. M. Lull if he would consider any plan to determine which organization represented the majority of said clerical employees and said defendant H. M. Lull replied that he would not, as the company had already entered into an agreement with the 'company union' and the matter was closed."

Complainants next introduced the following portion of Article IV of the amended answer in the contempt proceedings:

"They allege that a committee consisting of said Harper and others called on A. D. McDonald, President of said Texas and New Orleans Railroad Company, and that the said A. D. McDonald declined to interfere with action heretofore taken by H. M. Lull and other officers of said c[illegible]any."

Complainant next introduced the first paragraph of Article IV of the petition in the contempt proceedings; which was admitted by the Court as a matter not denied and therefore admitted:

"On September 9, 1927, a committee of said Railroad Brotherhood consisting of E. H. Fitzgerald, grand president, H. J. Chapman, grand lodge representative, Rich-

ard P. Dee, vice-grand president, and said H. W. Harper called upon said A. D. McDonald, president of said defendant railroad company at its offices in New York City, and advised him that the managing and executive officers of his said company in Texas and Louisiana had withdrawn without notice to the Railroad Brotherhood the recognition by said defendant company of said Railroad Brotherhood as the duly accredited representative of said clerical employees in Texas and Louisiana, and had designated and recognized the said 'company union' as the duly accredited representative of said clerical employees and had refused to examine although duly tendered the authorizations held by said Railroad Brotherhood of almost two-thirds of said clerical employees to represent them and had refused to discuss with the representatives of the Brotherhood any plan to determine whether said Railroad Brotherhood or said 'company union' held the authorizations of a majority of said clerical employees. Said A. D. McDonald advised said committee of said Railroad Brotherhood that whatever had been done by the defendant H. M. Lull and the other officers of the said company met with his approval and would be sustained by him as representing the attitude of the defendant railroad company; he, however, finally suggested that the differences between said defendant railroad company and said Railroad Brotherhood as to the question of representation be taken up with the United States Board of Mediation and see if through its aid such differences could not be adjusted and this suggestion met with the ready and hearty approval of said committee of said Railroad Brotherhood which immediately proceeded to Washington and laid the matter before the United States Board of Mediation as suggested by the said A. D. Mc-

Donald. Said Dee, however, received on October 11, 1927, a telegram from said United States Board of Mediation advising that said A. D. McDonald had refused to submit on behalf of said defendant railroad company said controversy to said United States Board of Mediation and to resume the mediation of the aforesaid wage controversy."

Complainant next introduced in evidence the following portion of Article V of the amended answer in the contempt proceedings:

"They allege that on or about September 28, 1927, the said J. G. Torian, Assistant to the Vice-President and General Manager, had a meeting at El Paso with F. C. Ehlinger, A. G. Baker, and Douglas D. Wade, and, in addition, with an officer of the Pacific System of the Southern Pacific Company and certain representatives of the Brotherhood of Railway and Steamship Clerks, etc., representing employees on said Pacific System, and that W. R. Mann, Assistant Superinendent of said Texas and New Orleans Railroad Company, excluded the said Harper from said meeting. 'They allege that the said W. R. Mann so excluded the said Harper at the direction of J. G. Torian and for the sole reason that the said Harper was not wanted by said Texas and New Orleans Railroad Company at said meeting because the Association of Clerical Employees had theretofore been lawfully and properly recognized as representing the clerical employees of said Railroad Company, and could not discuss or consider
627 the claims of said Harper at every or any meeting of the character of that at El Paso; that there was nothing of the character of that at El Paso;

that there was nothing which they had to say to the said Harper in said meeting and nothing with respect to which they desired to hear from the said Harper at the said meeting."

Complainants next introduced in evidence the ninth article of the amended answer in the contempt proceedings as follows:

"They allege that on or about September 6, one Brandin and one Griffith, clerical employees, who are members or who are claimed to be members of the Brotherhood of Railway Clerks were absent from their duties for about four hours for the purpose of calling on H. M. Lull, Executive Vice-President of said Railroad Company, in respect to business, or alleged business, of the said Brotherhood of Railway Clerks, and they allege further that inasmuch as said parties rendered no service to said Railroad Company during said period they were not paid for same. They allege that up to the present time they have made no deduction whatever from the pay of the officers of the Association of Clerical Employees on account of whatever, if any, time may have been lost from the discharge of their duties. They allege that it is optional with said Company and its officers whether they will make deductions or not make deductions for time lost by employees from their duties."

628 Complainants next introduced in evidence the following portion of Article X of the amended answer in the contempt proceedings:

"They allege that H. W. Harper, having rendered no service to said Railroad Company for a long period of time, to-wit: more than four years, they have dropped him from the roster of employees and have taken up or issued instruction that an annual pass issued to him be taken up. They also allege that an annual pass heretofore issued to the mother of the said Harper has been similarly taken up or ordered taken up."

Defendants thereupon introduced the portion of said paragraph immediately following that introduced by the plaintiff, which is as follows:

"They allege that said action is within the legal rights of the said Railroad Company and its officers, and was not intended to violate, and did not violate said temporary injunction."

To which portion complainant objected but which objection was overruled by the Court.

Complainant next introduced in evidence the following portion of Article X of the petition in the contempt proceedings:

To which offer defendant objected on the ground that all portions of the complaint in the contempt case are denied except where expressly admitted in the following portions, that the preliminary statement that all are denied goes through the entire answer, and is as effective as if contained in each paragraph, and
629 that therefore in so far as the admission is contained in defendant's pleading that that is not an admitted fact and is not admissible therefore, in the case on that theory. And that it will be self-serving and hearsay.

Which objections were overruled by the Court, to which defendant excepts.

"On or about June 9, 1923, H. W. Harper was granted indefinite leave of absence, effective June 15, 1923, to enable him to assume the duties as general chairman of said Railroad Brotherhood, since which time the said Harper has been treated as in all respects an employee of the defendant railroad company, as is usual and customary with said defendant railroad company and other railroad companies in similar cases; and since which time the said Harper has each year been issued an annual pass over all the lines of the defendant railroad company in the States of Texas and Louisiana, in order to enable him to attend meetings as general chairman of said Railroad Brotherhood, et cetera; on October 9, 1927, while on board one of the defendant railroad company's trains bound for Galveston, Texas, said Harper was advised by the conductor of said train that he had instructions to take up Pass No. A-25751, issued to the said Harper for the year 1927, and said conductor did not permit said Harper to ride on said pass from Houston to Galveston, said conductor having been given such instructions by the defendant railroad company, its offices and agents, especially those herein complained of. In like manner each year, for a period of the past few years, said Harper has also been
630 issued a pass by said defendant railroad company for himself and his mother, Mrs. Owen Harper, for transportation over the lines of said company in the El Paso Division, said pass being the usual type and kind of pass issued to employees having the requisite length of service, which Harper had had; the defendant railroad company had issued an order to all passenger

conductors to take up this pass, being A-13805, issued to said Harper and his mother, on the grounds that said Harper is 'out of the service.' On or about September 24, 1927, the defendant railroad company entered a notation upon the personal record card of the said H. W. Harper on file in its office at Houston, to the following effect: 'Has performed no service for company since June 14, 1923, and is dropped from the roster', and said Harper has not been officially notified by the defendant railroad company that he has been discharged from its employ, or his employment otherwise terminated, and has been granted no hearing ordinarily given to clerical employees."

Complainant next introduced in evidence Article Eleeven of the amended answer in the contempt proceedings, as follows:

"They allege that one John W. Walker, having rendered no service to said Railroad Company for approximately two years, has been similarly dropped from the roster and is no longer considered an employee of said Railroad Company."

631 Complainant next introduced in evidence as explanatory and showing what the admission is, that part of Article Eleven of the petition in the contempt proceedings as follows:

(Same objection and exception by defendants.)

"On September 9, 1925, John W. Walker was granted an indefinite leave of absence by the defendant railroad company to assume his duties as a member of the gen-

eral committee of said Railroad Brotherhood. On October 6, 1927, said Walker sent to the treasurer of said company check for $1.40, premium on certain group life insurance which he had theretofore paid for along with and in the same manner as other clerical employees; on October 7, 1927, A. D. Mims, superintendent of the San Antonio Division of said defendant railroad company, returned said check to the said Walker with a letter in which he advised that Walker was no longer considered an employee of said defendant railroad company; no hearing has been granted to said Walker and no cause or reason assigned for terminating his employment; nor have the usual customs and practices been observed in his case which would have ordinarily occurred in the cases of employees discharged and removed from the service, or where employment was in any manner terminated."

Complainant next introduced in evidence the following portions of the answer of the Texas and New Orleans Railroad Company to the affidavit filed by H. W. Harper on November 21, 1927, said answer being sworn to by G. S. Waid, November 22, 1927; Mr.
632 Waid's affidavit being to the effect that he is a vice-president of the Texas and New Orleans Railroad Company and has the knowledge and authority necessary to make said affidavit in its behalf:

"That it is a fact that there were and are on said lists five duplications of signatures."

"That there was also included in said authorizations one signed by Bert Campbell, who is a negro janitor employed on the El Paso Division, and also W. H. McCaluey, a freight trucker at Lufkin, Texas. While

these men work under the clerks' rules, they are not ordinarily eligible for membership in clerks' unions and were and are properly excluded from the count of authorizations."

Whereupon defendants offered in evidence the whole of Mr. G. S. Waid's affidavit.

Whereupon complainants objected to the whole affidavit being admitted into evidence upon the ground that the remainder of the affidavit was not clearly explanatory of the portion offered by complainants but undertakes to set out defendant Railroad's Company's position about an important matter.

The portion of the affidavit admitted by the Court is as follows:

"That it is a fact that there were and are on said lists five duplications of signatures, but said duplicate signatures were not counted or relied on by defendant, and accordingly, the total number of authorizations, less duplications, was and is 933; that there was
633 also included in said authorizations one signed by Bert Campbell, who is a negro janitor employed on the El Paso Division, and also W. H. McCauley, a freight trucker at Lufkin, Texas. While these men work under the clerks' rules, they are not ordinarily eligible for membership in clerks' unions and were and are properly excluded from the count of authorizations, thereby reducing the said number to 931, which is more than 929 claimed by the Association as of August 5 and 6, 1927."

Complainants next introduced in evidence the following portion of the same pleading sworn to by G. S. Waid:

"With respect to employees signing said authorizations and alleged not to have been in the service of Texas and New Orleans Railroad Company as of August 6, 1927, said employees being 6 in number: Because of the large labor turnover in clerical capacities on defendant's lint it was and is impossible that defendant's officers can currently keep up with such turnover. All said employees were in good faith believed by the officers of defendant handling this matter to be actual employees at the time of said count and they were all actually employees at the dates of their authorizations."

Defendant thereupon introduced the following purtion of the same affidavit immediately following that introduced by the complainants:

634 "Their number has been more than offset by employees newly entering the services of defendant, who are members of or have authorized the Association to represent them."

Complainant next introduced in evidence the following portions of affidavit of MAT NICHOLSON, dated November 30, 1927:

"However all personal office force employees were stricken from the list by agreement and because the United States Railway Labor Board ruled that while such employees were entitled to vote as clerical em-

ployees, yet, if they did vote, they would have to come under the clerks' agreement in all respects, including seniority and overtime, and the Railroad Company was unwilling that its operations should be hampered by having such employees come under the rules in said two particular respects."

Defendants thereupon introduced in evidence the whole of said affidavit as follows:

State of Texas,
County of Harris.

"Mat Nicholson, being duly sworn, deposes and says:

"I am the same Mat Nicholson who has heretofore testified in this proceeding by affidavit and in person.

"I have in the files of Texas and New Orleans Railroad Company list of names, addresses and positions of clerical employees entitled to vote on the ballot spread in June, 1923, pursuant to decision of the United States Railroad Labor Board. Said list of names, addresses and positions was agreed on by Texas and New Orleans Railroad Company (and other Southern Pacific Lines then operating), Association of Clerical Employees and Brotherhood of Railway and Steamship Clerks as containing the names of all employees entitled to vote at said ballot.

635

"Said list of clerical employees entitled to vote as aforesaid contains, among others:

"Messengers Office Boys, Callers, Mail Boy, Baggage Agent, Automobile Messengers, Assistant Baggage Agent, Private Branch Exchange Telephone Operators, Clerical Employees in Dining Car Department, Clerical Em-

ployees at Creosote Works of Texas and New Orleans Railroad Company, and also includes clerks, gatemen and miscellaneous clerical employees.

"Among the employees on said list is T. B. Kemp, then and now Assistant Baggage Agent at Fort Worth Passenger Station.

"Said list contained personal office force employees, including among them Ralph J. King, who was at that time General Chairman of the Brotherhood of Railway and Steamship Clerks. However, all personal office force employees were stricken from the list by agreement and because the United States Railway Labor Board ruled that while such employees were entitled to vote as clerical employees, yet, if they did vote they would have to come under the clerks' agreement in all respects, including seniority and overtime, and the Railroad Company was unwilling that its operations should be hampered by having such employees come under the rules in said two particular respects.

636 "Attached hereto and marked 'Exhibit A' for identification is copy of letter of June 26, 1923, addressed by H. W. Harper, then Acting General Chairman, Brotherhood of Railway and Steamship Clerks, etc., to J. G. Torian, giving the views of said organization with respect to employees classed as personal office force.

"Sworn to and subscribed before me on this, the 30th day of November, A. D. 1927.

....,
Notary Public in and for
Harris County, Texas.

"EXHIBIT A."

"San Antonio, Texas, June 26, 1923.

"Ballot to determine representation clerical Employees, other than General Office Employees:

"Mr. J. G. Torian,
Asst. to VP&GM,
Houston, Texas.

Dear Sir:

"This in reply to your letter of June 21st. above subject.

"We seem to be at variance as to the basis on which this committee contended that the 110 employees, classified by the carrier as Personal Office Force, should not be permitted to vote.

"Labor Board decisions, covering similar disputes on other lines, have in very plain language stipulated that only those employees, whom the carrier is willing include within the scope of the agreement shall
637 participate in the vote. The contention of the committee, that the 110 employees, classified by the Management as Personal Office Force, should not be permitted to vote, is based on the above referred to decision. Since your office has made known its unwillingness to include the disputed 110 within the scope of the agreement, we feel that our contention is well founded.

"We cannot agree with you in your understanding that these 110 employees are not properly subject to our rules and that they were, for that reason, not permitted to vote.

Yours truly,
(Sgd) H. W. HARPER,
Acting Gen'l Chairman."

Complainants next introduced in evidence a letter of J. G. Torian addressed to Ralph J. King, General Chairman of the Brotherhood of Railway Clerks under date of June 21, 1923, which letter having been heretofore fully set out in the bill of exceptions to the evidence adduced upon the hearing of the application for temporary injunction, is here omitted, but is specifically referred to and made a part hereof.

Complainants next introduced in evidence a letter of J. G. Torian addressed to J. C. McDaniels, General Chairman Association of Clerical Employees, and H. W. Harper, General Chairman, Brotherhood of Railway Clerks, under date of November 14, 1923, which letter having heretofore been fully set out in the bill of exceptions to the evidence adduced upon the hearing of the rule to show cause for contempt of Court, the
638 same is here omitted but is specifically referred to and made a part hereof.

Complainants next introduced in evidence in connection with the letter aforesaid decision No. 1971 of the United States Labor Board, which, having been heretofore fully set out in the bill of exceptions to the evidence adduced upon the hearing on the rule to show cause for contempt of Court, the same is here omitted, but is specifically referred to and made a part hereof.

Complainants next introduced in evidence the following instrument:

"EXHIBIT C-3."

"T. & N. O. Railroad Co.

Notice No. 551.

Lafayette, La., Aug. 12th, 1927.

"Passenger Conductor:

"If annual pass A-25751 favor Mr. H. W. Harper, Timekeeper, residence San Antonio, Texas, S. P. Lines, is presented take up, collect full fare and return to this office.

(Signed) R. M. GLOVER,
Superintendent.

Post.

Complainants next introduced in evidence a compilation of clerical and station employees on the Southern Pacific Lines in Texas and Louisiana and the number employed September 1922, as follows:

639 EXHIBIT C-4.

EXHIBIT "F."

Southern Pacific Lines in Texas and Louisiana.

Clerical and Station Employees—Number Employed Sept. 1922.

Class—	Number Employed
Chief Clerks—Transportation Department	26
Ass't Chief Clerks—Transportation Dept.	6
Division Accountants	12
Chief Timekeepers	9

Secretary	13
File Clerk	11
Chief Clerk—MP&C	6
Clerks—MP&C	140
Chief Clerks—MofW	7
Clerks—MofW	44
Superintendent's Office Clerks	133
Clerks—Stores	124
Station Clerks and Yard Clerks	1,016
Train and Engine Crew Callers	53
Janitors	12
Messengers and Chore Boys	71
Porters	167
Motor Truckmen	6
Freight Handlers or Truckers	403
Callers, Loaders, Locators, Cooperers, Stowers, Stevedores, etc.	148

640 EXHIBIT C-4 (continued).

Class—	Number Employed
Common Labor—Stations, etc.	146
Telephone Switch Board Operators	6
Grand Total	2,559

641 Defendants objected to the introduction of the above instrument on the ground that it was immaterial, which objection was overruled by the Court. Defendants excepted.

Complainants next introduced under an agreement the following statement:

"Hudson swore to the affidavit attached to the original Bill of Complaint that he was approached June 10, 1927 by C. E. Armstrong, Assistant Agent at the Houston Freight Station and asked to join the Association, and that he refused to join."

Complainants next introduced in evidence the affidavit of Hudson sworn to on the 17th day of October, 1927, as follows:

EXHIBIT No. C-5.

United States of America,
The State of Texas,
County of Harris; ss.

B. G. HUDSON, having been first duly sworn, deposes and says:

I have been Bill and O. S. & D. clerk in the local freight office of the Texas and New Orleans Railroad Company since January 1, 1927, or thereabouts and have been in the employ of said Railroad Company since April 29, 1926.

On October 14, 1927, at about 11:30 A. M., J. C. McDaniels, Chief Clerk in the Englewood Freight Yards of said Railroad Company at Houston, Texas came
642 to my desk in the local freight office of the said railroad company at Houston, Texas, and asked me if I was a member of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. In reply I asked McDaniels if he was acting in an official capacity in directing the

aforesaid question to me. He said: "How do you get that I am official " I replied that he was a chief clerk. He did not discuss further the question of his acting in an official capacity but stated that I did not have to answer his question if I did not desire to do so. He further stated that the only thing for me to do was to join the Association of Clerical Employees, as the Brotherhood of Railway and Steamship Clerks was not recognized by the officials of the Texas & New Orleans Railroad Company but that they had shut said Brotherhood out. He also stated that if myself and others did not join the said Association, it would only be a matter of time until a lot of us were let out. I then stated if that was the case I am the same as out of a job, to which he replied: "I guess so."

(Signed) B. G. HUDSON.

Subscribed and sworn to before me this 17th day of October, A. D. 1927.

(Signed) W. B. BATES,
Notary Public in and for Harris County, Texas.

643 Complainant next introduced in evidence another affidavit of Hudson, sworn to November 4, 1927, which having been heretofore set out herein is here omitted but is specifically referred to and made a part hereof.

Defendant thereupon introduced in evidence the affidavit of C. W. Derrington, made November 29 1927, in connection with the particular issue upon which the affidavits of Hudson were offered by plaintiff, which affidavit having been heretofore fully set out in the Bill of

Exception to the evidence adduced upon the hearing on the rule to show cause or contempt of Court, the same is here omitted, but is specifically referred to and made a part hereof.

Defendant next introduced in evidence the affidavit of E. A. O'Donnell, dated July 28, 1927, and marked Exhibit R-2, which affidavit, having been heretofore fully set out in the Bill of Exceptions to the evidence adduced upon the hearing of the application for a temporary injunction in this cause, is here omitted, but is specifically referred to and made a part hereof.

Defendant next introduced file of E. A. O'Donnell, bearing on the Hudson matter, the material portions of which having been heretofore fully set out in the Bill of Exceptions to the evidence adduced upon the hearing of the application for a temporary injunction in this cause, is here omitted, but is specifically re-
644 ferred to and made a part hereof.

Counsel for complainant under the agreement heretofore referred to, stated that R. E. Stotzer sworn to an affidavit on July 19, 1927, which is attached to the original Bill of Complaint, in which he stated that he had been approached by F. H. Bednark, Assistant Superintendent of the Southern Pacific Lines on the Houston Division, and by B. F. Moore, Agent for the Southern Pacific Lines at Sequin, Texas, concerning joining the Association and requested to join the Association and he makes certain other statements in the affidavit, and that he refused to join. In that connection, we offer in evidence the affidavits of R. E. Stotzer under date of October 31, 1927, (which has been heretofore fully set out herein) and another affidavit of R. E. Stotzer dated November 16, 1927, which is as follows:

(On letter-head of Brotherhood of Railway and Steamship Clerks, etc.)

Sequin, Texas, October 31, 1927.

EXHIBIT C-8 (continued).

Brotherhood of Railway and Steamship Clerks
Freight Handlers, Express and Station Employees

System Board of Adjustment
Southern Pacific Lines in Texas and Louisiana

H. W. Harper, General Chairman
211 Moore Building,
San Antonio, Texas.

Jno. W. Walker,
Gen. Sec.-Treas.,
211 Moore Building,
San Antonio, Texas.

San Antonio, Texas,
Nov. 11th, 1927.

Mr. H. W. Harper,
Gen. Chairman B. of R. C.,
San Antonio, Texas.

645 EXHIBIT C-8 continued.

Dear Sir:

I am giving you a statement of facts below pertaining to my hearing in Mr. A. D. Mims, Supt. of T. & N. O. R. R. Office on Nov. 11, 1927.

I was advised by Mr. Mims on Nov. 10th, 1927, that I would be granted a hearing in his office at 3:00 P. M. Nov. 11th, 1927, as per his letter attached to this file.

As you know several days previous I had requested you and Mr. L. J. Maloney to act as my representatives at this hearing in compliance with rule 27 of Clerks Agreement.

At about 3:00 P. M. on the above date Mr. Maloney, yourself and I arrive dat the Southern Pacific Depot in which Mr. Mims' office is located, and called at his office, we were met by Mr. H.. D. Beckelmann, who is chief clerk to Mr. Mims and you asked him if Mr. Mims was in and if he was ready to hold the hearing. He stated that he thought Mr. Bednark was going to hold the hearing however he would ask Mr. Bednark and let us know. He then went to Mr. Bednark's office and after a few minutes he returned and told us to come into Mr Mims' office, and as you went into the door you asked Mr. Beckelmann if you could come in also, he stated he thought so as Mr. Mims had told him to tell us to come in. We went in to Mr. Mims' office and after introducing those of us that were not known we were seated.

Mr. Mims asked me if you and Mr. Maloney were to represent me in the hearing and I stated that you were, he then told you that you could not sit in the
646 meeting as you were not an employee of the railroad and that the railroad did not recognize the Brotherhood of Railway Clerks and therefore you would not be permitted to stay, you then made an effort to explain to Mr. Mims that under a rule of the contract you should be permitted to stay in the hearing as my representative Mr. Mims then stated to you that he did not wish to start an argument with you in regard to this and that you should retire from the room which you did. I was then left with only one representative, Mr. Maloney, Mr Mims then asked Mr. Maloney several questions as to where he was employed, what hours he worked, which Mr. Maloney explained. Mr. Mims then told Mr. Maloney that he was to understand that he was there as a Clerk, Mr. Maloney agreed to this, and then

Mr. Mims called a stenographer and dictated to him what he called the Company's status of the case, he then told me that I could add what ever I might wish to the case and that the Stenographer would take same down.

Mr. Mims asked Mr. Maloney if he should understand that we were asking reinstatement on a leniency basis, Mr. Maloney stated that we were not pleading for leniency, but that it was his opinion that the penalty assessed was not in keeping with the offense committed Mr. Mims then stated that the R. R. Company was paying out their good money for the errors that the Clerks were making and that it was time they were making an example of some one.

Mr. Maloney then asked me how long I had been in the service of the Railroad Company and I told him eight years and fourteen days up to the date I had
647 been dismissed from the service. He then asked me if I had any other discipline charged against my record. I stated that I had received a reprimand about 1920 or 1921, however I did not remember the exact date, but up to the present case I knew of nothing else.

I then asked Mr. Mims if it was customary to dismiss men from the service, under ordinary circumstances, for making error of this kind in this length of time, he then stated that he was sure that this was not the only errors that I had made in my eight years of service, and I agreed with him that I had made other errors but that they were minor errors and that they had not cost the Railroad any amount of money. He then stated that this had nothing to do with the case and I contended that it did, as I had not heard of nor had I seen a similar case to mine, he then stated that at times they lifted men from the service for making errors, however he did not mention a similar case.

Mr. Bednark then asked me to tell Mr. Mims what I had on my mind or what was worrying me about this time, and I stated that I did not remember that I was worrying about anything as this was too long a time to remember just what I could have been thinking about.

Mr. Mims read the letter I had written to Mr. Moore in regard to my responsibility in the error and got up from his chair and told me that my letter plainly showed that I did not give a damn about the Company's business, I then stated to Mr. Mims that I did not believe that he could prove such a statement and that if he would ask
he people that I worked with every day that he
648 would see that he was accusing me of something that was not correct.

Mr. Mims again asked Mr. Maloney if he was to understand that we were asking reinstatement on a leniency basis, and in view of the fact that we had been denied a part of my representation we decided it would be best to make this plea, which the next attached copy of the hearing will show.

As we were departing Mr. Bednark stated to me that he was afraid I had been influenced by evil company, or words to that effect, however, I assured him that I was old enough to think for myself.

Mr. Mims also insinuated that a petition which he had received in his office had been circulated by me or that I had something to do with it, which I denied as I
knew nothing of it other than that a friend of
649 mine had informed me that some of the business men had circulated it.

I might further state that Mr. A. D. Mims, Mr. F. H. Bednark and Mr. H. D. Beckelmann, Mr. L. J. Maloney and myself were left in the room after you had been

ruled out by Mr Mims. The stenographer was also in the room however he took no part other than what was dictated to him.

Yours truly,
(Signed) R. E. STATZER.

Sworn to and subscribed before me a Notary Public this sixteenth day of November, 1927.

(Signed) B. KUCHENBAKER
Notary Public, in and for
Bexar County, Texas.

Defendant next introduced in evidence, in answer to the foregoing affidavits, the affidavits filed herein December 1, 1927, in the contempt matter, of A. A. Sims, Superintendent of Freight Claim Prevention, with the two copies of letters written by him, or his office, to Superintendent A. D. Mims, affidavit of F. H. Bednark, all of which documents having been heretofore fully set out in the Bill of Exceptions to the evidence adduced upon the hearing of the rule to show cause for contempt of Court, are here omitted, but are specifically referred to and made a part hereof.

Plaintiff thereupon introduced in evidence affidavit of Charles Ginsburg sworn to by him on November 3, 1927,
650 which, having been heretofore fully set out in the Bill of Exceptions to the evidence adduced upon the hearing on the rule to show cause for contempt of Court same is here omitted, but is specifically referred to and made a part hereof.

Defendant thereupon introduced in evidence upon the particular matter next hereinabove set forth, the affidavits of G. E. Garrett, Hugh Derr, J. D. Rooke, J. T. Connor, J. A. Power, and F. C. Ehlinger, each and all

of which having been heretofore fully set out in the Bill of Exceptions to the evidence adduced upon the hearing of the rule to show cause for contempt of Court, the same are here omitted but are specifically referred to and made a part hereof.

656 E. L. GRIFFITH, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is E. L. Griffith. I have lived in the City of Houston about three years and a half. I worked for the T. & N. O. Railroad Company the last two years, since the "Sap" was taken over by them; about two years and a half. The S. A. & A. P. is commonly referred to as the SAP. It is now a part of the Southern Pacific Lines. I had worked for them and was working for them at the time the Southern Pacific Lines acquired control of the S. A. & A. P. My seniority as a clerk in the employ of the Southern Pacific Lines dates June 20, 1922. I had been in the employ of the S. A. & A. P. as a clerk and was taken over along with the other clerks into the employ of what is called the Southern Pacific Lines which are now operated by the Texas and New Orleans Railroad Company.

Along in June of last year I was then receiving clerk on the out-bound platform of the local freight office of the Southern Pacific Lines. That is over on the North side, on North San Jacinto. I was working under Mr. C. E. Armstrong, assistant agent, and Mr. Sanders, who was agent at that time, and also Mr. Lipscomb, warehouse foreman. I was directly under him. I mean Mr. Sanders was agent and Mr. Armstrong was his assistant agent, of the railroad company. I was working under

their supervision and direction. Along in June, 1927, about June 10th, I believe, Mr. Armstrong came to me with some kind of a petition, having reference to who was going to represent the clerical employees. This is
the Mr. Armstrong who was assistant agent of
657 the defendant railroad company. I don't remember just what was in the petition. It was something about joining the company union, that is, the association of railroad employees. Well, he said that I could read that over and sign it that the management had said that they would not give a cent in the name of the Brotherhood of Railway Clerks, or through the Brotherhood of Railway Clerks, but that they had $75,000.00 they were ready to distribute among the clerks if they wanted it, and I declined to sign it and passed it back to him It seemed they wanted us to sign that, because I asked him if they had to distribute it what they wanted us to sign it for, why didn't they go ahead and distribute it. He said he knew nothing about it, he was unable to explain it, he was just doing what he had been told. He did not say who told him.

Q. Now, did this man, Armstrong, what sort of supervision, control over you as an employee, did he have, Mr. Griffith?

Mr. Carter:
We object to that as leading.

The Court:
Overruled.

Mr. Carter:
(The Defendant): Note our exception.

A. Well, he is assistant agent and of course I take orders from the assistant agent.

Mr. Armstrong usually does the hiring of the employees of my rank and kind there in the local freight office. There was nothing else said in that conversation that I have not told you, only what I might have asked him. I asked him how long they had had the $75,000.00 and why they hadn't applied it. We had been
658 trying to get a raise, why did we have to sign the thing to get it, and he said, as he said before, he knew nothing about it, only what he had been told. He had been asked to circulate this petition and he had been doing what he had been told. I am a married man. I believe that was all of the conversation with Mr. Armstrong. I just asked him a few questions, the questions that I explained, and he said that he knew nothing about it at all, only just what he had been told. That he had been asked to pass the petition around and that is what he was doing, and I handed him the petition back and went on with my work. This occurred on the platform while I was on duty. He came to where I was working, during working hours.

Later on, in September 1927, I was in the office of Mr. Lull, the executive vice-president of the defendant railroad company. The occasion of my visit there on September 6, 1927, was that we went there as a committee to see Mr. Lull in regard to their case. On the committee were Mr. Harper, Mr. Walker, myself, Mr. Brandin and Mr. Moulin, of New Orleans, I believe. Mr. Harper and Mr. Walker are connected, what might be called officially, with the Brotherhood of Railway Clerks. Mr. Brandin, Mr. Moulin and myself are clerks in the employ of the Southern Pacific Lines. When we went to see Mr. Lull, Mr. Harper presented our case for wages and recognition to him, it was all up at that time, and Mr. Lull had very little to say. He said as far as

he was concerned it was a closed matter. And that is about all. Mr. Harper stated of course that
650 the Brotherhood of Railway Clerks were representing the clerical employees on the Southern Pacific and also offered proof to show that they were, and also offered, told Mr. Lull I believe that he had proof there to show him that he was in authority for being there that he was representing the clerical employees, the Brotherhood of Railway Clerks. I don't think the question of whether Mr. Harper was the accredited representative of the clerical employees was gone into. I have seen these authorizations of these some 1200 clerical employees; he had those authorizations there as I understand it, but he did not show them to Mr. Lull.

Mr. Wharton:

May it please the Court, at this point I want to call the Court's attention to the fact that we raised in our motion to dismiss and we will discuss later that the issue or question of recognition can't come before the Court. This statute, even if it is a valid statute, does not have anything in it to require that they recognize one or the other. The portions of the statute invoked are merely hose that declare they shall select representatives without interference, coercion or influence, and there is nothing in the statute which requires or compels the company to recognize one or the other. No Court order could compel the recognition of one or the other and the refusal to recognize could not be made the basis of an action for injunction or otherwise, and I want to call the Court's attention to the fact that we raised that issue and we raise it against the introduction of this testimony.

The Court:
Overrule the objection.

The Defendant:
Note our exception.

660 Stipulation:
It is agreed that there are 1200 papers here which have been offered in evidence, which are the purported authorizations to the Brotherhood herein elsewhere referred to.

The Witness:
Mr. Harper had these with him when he went to Mr. Lull's office. He said that he had proof to show through authorizations that he represented the majority of the clerical employees. Mr. Lull declined to reply to that, said that he would not commit himself. He said that he would not go into the details of it at all, that what had been done was satisfactory to him and it was a closed matter. I don't believe and don't remember whether he referred to what had been done. The so called company union was talked about several times but there was no reference in that case where he referred to it as what had been done, closed the matter with him. That is about all that occurred.

(Defendant here formally reserved an exception now and hereafter to any testimony as to the failure to recognize the Brotherhood, without the necessity for repetition.)

On cross examination, he testified:

In June, 1927, I was a member of the Brotherhood of Railway Clerks. I had been a member since something like 1923 I believe. Probably four years. My relation to the Brotherhood was known. I suppose that Mr. Armstrong did know that I was a member of the Brotherhood. I could not say that my activities with the Brotherhood was a pretty well known thing. I admit that I was active in organization work. And always had been active in it. Those activities were probably known to Mr. Armstrong. Mr. Armstrong's efforts to prevail on me to join the Association did not
661 induce me to resign from the Brotherhood and join the Association. I have no official position with the Brotherhood at this time other than having been just appointed as local chairman. I was appointed an officer of the Brotherhood along about September, 1927, I believe. Mr. Harper appointed me. Other than the employees of the Southern Pacific System or the Texas and New Orleans Railroad Company, the Missouri Pacific and Santa Fe Clerks belong to the same local chapter or lodge of the Brotherhood here in Houston. There is a membership of the Brotherhood of Railway Clerks in Houston that includes the employees of the local offices of all the railroad lines in Houston. My position is not that of chairman of the entire lodge, but just on the system board. This is one of the official books, or constitution and by-laws of the organization. I was not elected by vote in any election in the T. & N. O. or Southern Pacific employees as an officers of the system employees—that is the way they handle it—I was just appointed to act in the absence of another officer. The last election of division chairmen was about a year ago. Mr. Brandin was elected. He is still an official. I was just appointed to act in the absence of an-

other officer who could not be here at that time. I forget his name. He is from Austin. He was a member of the system board. We call our local chapter a lodge. I was not succeeding the Austin man, I was just acting in his absence, appointed for that time.

I am still in the employ of the Texas and New Orleans Railroad. Mr. Brandin, who accompanied me on this mission to Mr. Lull's office is still in the em-
662 ploy of the railroad. Mr. Harper is not engaged in doing any service for the Texas and New Orleans Railroad Company at this time. I could not say how long he has been out of the service. He has not been doing any actual service for the Texas and New Orleans Railroad Company since I have known him. Mr. Walker is not actively engaged in the service of the Texas and New Orleans Railroad Company at this time. He has not been doing any service for the Texas and New Orleans Railroad Company during the time that I have known him; he used to hold a position with the "Sap." He was general chairman over there. I don't remember how long it has been since he rendered any service to either railroad company, either the S. A. & P. or the T. & N. O., but since the Southern Pacific took the San Antonio & Arkansas Pass over. He held a position at that time. I mean that he has not been in the active service of either of the roads since the Southern Pacific took over the S. A. & A. P.

All I know about this case is the conversation that happened between Mr. Armstrong and I in June, 1927, and that I was present at a conference had with Mr Lull in September, 1927.

On Re-Direct Examination, he testified :

I did not like to sign the thing that Mr. Armstrong tried to get me to sign because personally, you know, that is doing away with the right to representation and bargaining collectively for better working conditions. That was my reason.

663 W. H. SMITH, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is W. H. Smith. I have lived in Houston fourteen years. I have been employed by the Texas and New Orleans Railroad Company, defendant in this case, since December 24, 1919. I was employed at the local freight office in a clerical capacity, various duties assigned from time to time, under Mr. J. A. Sanders, agent, and Mr. C. E. Armstrong, assistant agent, and there had been some changes in the chief clerk's capacity. I was also under the chief clerk, taking orders from the chief clerk, but at that time under Mr. T. D. Elam.

Early in July of 1927, I was in the freight agent's office in connection with the matters inquired about in this suit. I was asked to go there by Mr. J. C. McDaniel, chief clerk for assistant yard master,—I don't know just what his title is,—at Englewood. I did not work under him. Mr. McDaniel was at one time the chief clerk and he met me in the hall up stairs. I was getting ready to go out on the produce row to make certain adjustments for the company, and he hailed me and said that he and Mr. Derrington wanted to see me in the agent's office. I said all right. "I will be there in just a minute, just as soon as I can get back." I was

on my way to the record room, and on my way back I stopped in the agent's office. Mr. Derrington was in there and Mr. Miller and Mr. Archie Wilson. Mr. Derrington, I was told, was the chief clerk in the superintendent's office. I understood that he had just as much authority over ordinary clerical employees such as I, as the agent or the assistant agent. That would
664 include the right to hire and fire. Archie Wilson was one of the clerical employees and Mr. Miller was at that time a clerk. Mr. McDaniel introduced me to Mr. Derrington. Of course, I had been previously introduced, not previously introduced personally, but I knew who Mr. Derrington was and upon the introduction Mr. Derrington asked me my initials and I gave him my initials, and he then in turn asked the other two boys that came in the office what their initials were, and notation was made of these initials of each man that was so questioned. The other two boys that I spoke of were clerical employees like myself. They were both sitting there, I think, when I walked in. After Mr. Derrington took the names of each one of the three of us, then he began to question us. I think the first question that we were asked was if we belonged to the Brotherhood of Railway Clerks, and Mr. Miller replied that he did and so did I. Mr. A. E. Wilson replied that he did not belong. And on that reply Mr. Derrington said you may as well not belong because after tomorrow there will be no B. of R. C. Then the conversation diverted from one to the other, and he began to talk to Mr. Miller. I am unable to relate just what that conversation was but the question arose about wages. This was on July 7th.

The question arose about wages and also the discussion about the clerical representation. Mr. Derrington said that he and Mr. McDaniel were sponsoring the new organization or one resurrected back from 1923, and if we would all come into that organization, or even get 51 per cent, that he was in a position to
665 know that a substantial increase would be granted, and we were given asurance that not a cent would be given to the Brotherhood of Railway Clerks. Mr. Derrington gave us that assurance. They began to argue a few points pro and con, and the subject just at that time I think diverted—the conversation diverted, either to Mr. Wilson or to Mr. Miller. They had a petition or authorization or something to sign, they had some litle pamphlets, leaflets of some kind with a sort of outline as to what their organization, or the one that they were sponsoring, represented. There wasn't much there, but however, if our names were to be put there, we were to get the increase, and he also stated that we deserved a substantial increase, and that through a majority, or through 51 per cent we would get it if we came in on that side. Mr. Derrington said that we deserved a substantial increase and that he was in a position to know that we would not get it through the B. of R. C., that is, the Brotherhod of Railway Clerks. That is to whom I am referring. But we would get something through the organization that he and Mr. McDaniel were sponsoring, which was the Association of Clerical Employees. I am not able to recall just what was the substance of what was on those forms that we were asked to sign, but down at the bottom, about the last line that I remember, it said "we desire Mr. J. T. McDaniel to represent us in the future," or something or other, I can't recall what it was that was included

in the little petition, but it was words to that effect. That is what we three men were asked to sign. The gist of it was that we wanted McDaniel to represent us. I did not sign it. The other two clerical
666 employees whom I mentioned, Archie Wilson and Mr. Miller, were ordinary clerical employees like myself. The other two men in the conference who were there and who were talking to us were Derrington and McDaniel. McDaniel had the right to hire and fire employees at the Englewood yard office, that worked under him, some fifty or sixty in number. I worked under McDaniel as chief clerk in the local freight office prior to that time. I did not work in the Englewood office under him. He has been in that kind of position with the Southern Pacific Lines since I have been employed, having power and authority to hire and fire other ordinary clerical employees. So was Derrington.

Mr. Sanders was the agent. I mean by "the agent," the agent or representative of the Southern Pacific, the T. & N. O. Lines in Texas and Louisiana. That is, he was discharging the duties for the carrier in that capacity. He, the agent, was the boss, the big boss. There is at each station on the railroad what is called the local agent. That is the man that is in charge of the receipt and disbursement of freight at that particular place. I do not mean that he is such an agent as a porter might be. The local freight agent at Houston, whom I refer to as agent, was J. A. Sanders, at that time. He was not present at the conference. However, he was in the office. He was about the distance from myself to the attorney, Mr. Carter, from the conference. That is eight or ten feet. It was in the private office of Mr. Sanders. That is what I had reference to when I said the "agent's office." Mr. Arm-

667 strong, the assistant agent, was not actually in there at the time of this conference. Mr. Sanders could have heard what was being said if he had been listening. I don't know whether he was or not. Some times he was talking over the telephone, or performing the different duties, whatever they may have been.

On Cross Examination, he testified:

I am still employed by the Southern Pacific. I have been in its employ continuously since this conversation occurred there which I have detailed. I have not been demoted. Nothing has happened to me. My compensation has been increased since that time eleven cents a day.

Neither Mr. Derrington nor Mr. McDaniel at that time was my superior, and neither had any direction or control over my work or service, or anything of that kind. I beg your pardon. Mr. Derrington, I understand, in fact I knew, was the chief clerk in the superintendent's office and I knew that he had just as much authority as Mr. Sanders had. I have understood that in the rules and regulations of the Texas and New Orleans Railroad Company that the chief clerk in the superintendent's office has just as much authority as has the local freight agent of the T. & N. O. in the City of Houston. Mr. O'Donnell, of course, at that time was the superintendent of terminals. A number of actions, of course, a number of things, a number of orders issued through Mr. O'Donnell's office, I understood were through Mr. Derrington as chief clerk; just the same routine would be in the agent's office. I was trying to relate to you upon what I based my statement that the

chief clerk in the superintendent's office has as
668 much authority as the local freight agent of the T. & N. O. at Houston. Mr. Derrington is in the same capacity as Mr. Elam would be, or was at that time, in Mr. Sanders' office. If Mr. Elam wrote me a letter and signed Mr. Boon's name to it and put his initial TD down at the bottom, I knew that meant the order of the agent. And if Mr. Derrington wrote a letter to the agent, that would practically be directed to me or come to my files and signed the superintendent of terminals name to it, and putting his initial at the bottom, I knew that meant the agent, the authority of the superintendent's office. If a copy went out with, in the case of O'Donnell, with a "D" after it, I knew that Mr. O'Donnell would back up Mr. Derrington in anything that he did that his name was signed to. In a sense, whatever activities I ascribed to Mr. Derrington would be because he signed Mr. O'Donnell's name to it.

When I went to work in the office of the local freight agent, I was employed by Mr. Faris, when at that time the assistant freight agent. I was not employed by Mr. O'Donnell or anybody in his office. My employment came from the local agent and not from the superintendent's office.

In addition to Mr. Miller, Mr. Wilson, Mr. Derrington, Mr. McDaniel and myself, constituting those who were present when this conversation occurred in the agent's office, there were others that came in and out when this conversation occurred, and some I may have taken note of and some I may not. Mrs. Allen, the agent's secretary, was also present. She was not par-
669 ticipating in our conference. I know, too, that Mr. O'Farrell, Sr., was also present. He is still in the employ, in the service. Mr. Miller is not.

Mr. Wilson is. My compensation and responsibility of position have been varied in a way since I was first engaged in the railroad company's service in 1919. I was first employed as a cotton clerk, assisting in the proper discharge of the duties that were connected up with the department called the cotton department. I was assigned that position for a little while and I was then transferred to a night abstract job which paid the same salary, or there might have been a difference in the salary of $1.50 a month, something like that. I occupied that position for a little bit more than a year and then I was given the position as—it was entitled "statistician,"—that is, in fact it was compiling reports on tonnage and so forth. There was no increase of compensation in that change. The next position was as abstract clerk, similar, in fact the same capacity that I was occupying prior to the statistical work, and from that position I was transferred to the position that I now occupy. The duties are wholly, or practically wholly, correspondence and so forth. I had my own election in choosing those jobs.

On Re-Direct Examination, he testified:

In connection with my testimony on cross examination yesterday afternoon when counsel for the railroad company asked me with reference to why I said Derrington had authority to employ and discharge clerical employees: I had not fully explained the entire number
670 of reasons. I fact, I had not wholly explained the one that I had made an attempt to. That is, with reference to signing of correspondence. It is an almost wholly practice of clerks, subordinate clerks in signing the superior's signature to affix a "D"

or at least some letter mark. You may call it an ear mark of some kind to designate the one that dictated the letter. Now I had reference particularly to the chief clerk in Mr. Sanders' office. My work was somewhat connected with his and I received practically all of my instructions through him and all of his correspondence either had, if it hadn't the affix of his signature at the bottom of the agent's signature, it was at least shown out in the margin column of the letter, that is with the steno.'s initials also. That is what I was trying to explain. Now then I haven't had much correspondence from the superintendent's office and I am unable to say definitely whether or not that was the practice of the clerical employees of Mr. O'Donnell's office, but I had reasons to believe that certain correspondence that I had received on one or two occasions with reference to company business, that Mr. Derrington had wrote those letters. While in the agent's office the question was asked with reference to why a certain petition petitioning the management for a change of holiday that was granted according to the contract with the clerks on February 22nd, which is Washington's birthday, to change with us and give us a Texas holiday, which of course was a more desirable day and we could get out in the sunshine and so forth, and February was rather a bad month and it was the desire of the employees in general to change over to that date, to San Jacinto day, April 21st, I believe it is. Mr.

671 Derrington's reply was "I must stop that petition because I was merely giving the B. of R. C. a dose of their medicine." He made that statement in my presence on that occasion. The clerical employees petitioned the management for that change in holiday. In this discussion which I told about in the agent's office,

that matter was referred to. I did not know prior to the discussion where the petition had gone to, except that it had been passed up towards the management. That's as far as I knew. This reference to it in the conference was the extent of my knowledge about it except that there was such a petition.

There also arose the question, I don't know who asked the question, what have we to insure us of an increase if we were to sign the little leaflets that you have here, and Mr. Derrington's reply to that was, "my word". The increase that I am talking about now was the increase which it was said the company was ready to give through the clerical association, the increase in general which was talked about or discussed. I think those are all the reasons that I can recollect upon which I based my statement of yesterday.

Mr. McDaniel was some times designated as chief clerk and quite often as assistant yard master, and I understand his duties were to hire and fire employees for the particular service rendered around the yards, the clerical service. I worked under him for a time.

On Re-Cross Examination, he testified:

672 Mr. McDaniel had no control or authority over me after he left the service as chief clerk at the station. His relation to the yard work out at the Englewood yards had nothing to do with my duties. During the time that he was chief clerk to the agent I was employed in the agent's office. He had the authority to hire and discharge employees while in the capacity of chief clerk at the station of the clerical forces that were under him and then I understand, in fact I knew some others that worked at the

yard office, or it was generally understood that he had authority to hire and fire clerks at the Englewood yards but no jurisdiction over us. At the time of this conference which I mentioned, they had a constitution or something there indicating the scope and purposes of this clerks' association. Mr. Derrington stated on that occasion in substance that it was not necessary or desirable for me to sign, he didn't ask me to sign at that time, that all he wanted me to do was to take those papers and study the constitution over and then make up my mind about it. I was asked to sign if I wanted to at that time, but it could be deferred to another time, but with preference, would much rather have it at that time. There have been occasions in the seniority arrangement of clerical employees in the employ of this defendant railroad company at Houston, that a man has some times been moved from what is called the local freight office to the Englewood yard office, and vice versa. In the event of a better place higher up being open in the Englewood office, a clerk in the local freight office could not do what you call "bid" on it, bid it in; it would have to be an agreement between the ones in authority to make that
673 transfer. In other words there is a differecne, what is called a seniority district.

E. L. GRIFFITH, having been called as a witness for complainants, and having been previously sworn, was recalled and testified as follows:

There was a deduction made from my pay or compensation on account of my absence from duty at the time that some other clerical employees and I went to

the office of Mr. Lull about September 6th. I was absent about four hours from my duty and my pay was reduced four hours. No one else was employed in my place or anything of that kind that I know of.

On Cross Examination, he testified:

My work was not being done and I rendered no service to the railroad company during that four hours that I was absent.

(In answer to a question by the Court the Witness testified):

I had never gone with a committee of the Brotherhood to see any of the officials before that time, and never had any other experience of that kind.

G. R. COTTINGHAM, called as a witness for complainant, and having been duly sworn, testified as follows:

My name is G. R. Cottingham. I am auditor and secretary of the defendant, Texas and New Orleans Railroad Company. I have occupied that same position for a number of years. There was a subpoena served upon me recently in this matter to appear here
674 and bring certain letters and papers and records and vouchers and so on. I have done that.

I hand you now some vouchers produced in obedience to subdivision "C" of the subpoena, calling for any and all vouchers and so on showing the salaries or allowances for expenses paid to Ehlinger, Baker, Wade, Mc-

Daniels, Derrington and De Trofford. It is the voucher for expenses rather. I have them beginning with those vouchers drawn in favor of Ehlinger, chief clerk, and beginning with June 25, 1927, and the next one is dated July 18, 1927, August 3rd, 1927, and so on through, one each month approximately, until February, 1928, to Ehlinger. In each instance those are supported by an itemized statement of what they purport to compensate them for, or reward them for. That is attached to it in each instance. The next one beginning in June is the expense account of Derrington, and the July expense account of the same man; also September. There were none for August. Also October and December and January, 1928, for Derrington. Then I have those beginning with the month of May, 1927, for D. D. Wade, one for the month of June and one for July. Then we have those in favor of McDaniels, one for July 1927, one for September, 1927, and one for February, 1928.

The next thing called for, some thirty-five extracts from pay-rolls of the salaries of these men, A. G. Baker, D. D. Wade, J. C. McDaniels, C. W. Derrington, F. C. Ehlinger and A. J. De Trofford. I have taken from the pay-rolls of the defendant railroad company the proper excerpts to indicate their salaries for the months from and including May, 1927, to February, 1928. That
675 is on this piece of paper, upon which I have compiled it.

Complainant thereupon introduced in evidence the paper identified by the Witness, which is marked Exhibit "C-10," and is as follows:

EXHIBIT #C-10—Cert.

	1927.									1928.	
	May.	June.	July.	August.	September.	October.	November.	December	January.	February.
G. Baker	225.00	225.00	225.00	1st pd.– 112.50 2nd pd.– 122.50	245.00	245.00	245.00	245.00	300.00	300.00
D. Wade	138.21	145.48	142.18	155 34	148.40	156.10	148.40	154.00	150.50	137.20
C. McDaniel	220.72	220.72	220.72	1st pd.– 110.36 2nd pd.– 115.00	230.00	230.00	230.00	230.00	230.00	230.00
W. Derrington ...	235.72	235.72	235.72	1st pd.– 117.86 2nd pd.– 125 00	250.00	250.00	250.00	250.00	250.00	250.00
C. Ehlinger	260.72	260.72	260 72	1st pd.– 103.36 2nd pd.– 135.00	270.00	270.00	270.00	270.00	270.00	270.00
J. DeTrafford ...	144.05	135.34	135.02	138.19	137.22	137.52	140.90	139.36	91.58	82.40

10—Crt.

677 The Witness:

That is about the only letter I have in my files that has any reference to the Association. That letter is addressed to all of the different superintendents and other officials by Mr. Torian, with respect to this agreement with the clerical employees and so on, the letter being dated August 21st, and the memorandum of agreement referred to in it accompanies that letter.

Complainant thereupon introduced in evidence the letter and memorandum of agreement referred to, which is marked Exhibit "C-11," and which is as follows:

EXHIBIT C-11.

Agreement reached with General Committee of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana on revision of existing rates of pay:

Houston, Texas, August 21, 1927.

Mr. C. R. Morrill, Supt., El Paso,
Mr. A. D. Mims, Supt., San Antonio,
Mr. G. B. Goodloe, Supt., Victoria,
Mr. H. J. Micksch, Supt., Houston,
Mr. E. A. O'Donnell, Supt., Houston,
Mr. R. M. Glover, Supt., Lafayette,
Mr. P. B. Torian, Supt., New Orleans,
Mr. B. S. Hollimon, Supt., Ennis,
Mr. J. H. Walsh, Supt., Austin,
Mr. L. B. Wood, Gen. Storekeeper, Houston,
Mr. D. H. Lusk, Mgr. Dining Car Service, Houston,
Mr. C. T. Davis, Supt., Wood Preserving Plant, Houston,
Mr. J. S. Netherwood, Asst. Supt., MP&E,

678 Algiers,
Mr. F. L. Carson, Asst. Supt., MP&E, San Antonio,
Mr. J. T. Conner, Supt., Shops, Houston.

Gentlemen:

I enclose copy of agreement reached August 20th with General Committee of the Association of Clerical Employees representing Clerical Froces on these Lines, other than the General Office Forces. This agreement you will note provides for an increase that is to be distributed by joint action of the representatives of the company and of the Association of Clerical Employees, and is to be made effective from August 16th provided the necessary adjustments are worked out in new rates that are agreed upon are to be made effective second half of August. If this is not accomplished the new rates that are agreed upon are to be made effective September 1st.

We will begin meetings with the Committee Monday, August 22nd, for the purpose of working out the necessary adjustments in existing rates of pay and will use for this purpose the list furnished by each division showing the positions that were in effect July 15th. When this work has been completed you will be furnished with the new rates as early as practicable.

Kindly acknowledge receipt.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

Cy-Mr. G. S. Waid,
Mr. R. C. Watkins,
Mr. L. B. McDonald,

Mr. T. H. Meeks,
Mr. O. C. Castle,
Mr. J. A. Power,
Mr. G. R. Cottingham.

679 Memorandum of Agreement,
between
Texas and New Orleans Railroad Company.

(Lines of:
The Galveston Harrisburg and San Antonio Railway Company,
Texas and New Orleans Railroad Company,
Louisiana Western Railroad Company,
Morgan's Louisiana and Texas Railroad and Steamship Company,
Iberia and Vermillion Railroad Company.)

(Line of:
Houston & Texas Central Railroad Company.)

(Lines of:
The Houston East and West Texas Railway Company,
Houston and Shreveport Railroad Company.)
and
The General Committee of the Association of Clerical Employes of the Southern Pacific Lines in Texas and Louisiana; representing the Clerical Employes, other than General Office Employes.

1. Without otherwise modifying or affecting the existing rules with respect to working conditions of clerical employees of these lines, other than General Office employees, it is hereby agreed by and between the com-

pany and the General Committee of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana that an increase aggregating the sum of $100,000.00 per annum shall be distributed by joint action of the representatives of the company and of the Association of Clerical Employees of the South-
680 ern Pacific Lines in Texas and Louisiana in such a manner as to bring about just and equitable rates for the clerical employes.

2. The adjustments in rates of pay that will be made under the provisions of this agreement will be placed in effect as of August 16, 1927, provided they are worked out in time for the current payrolls. If this is not accomplished, the adjustments covered by this agreement will be put in effect as of September 1, 1927.

3. This agreement shall continue in force until September 1, 1928, and thereafter until thirty (30) days notice in writing stating the change or changes desired shall have been given by either party to the other.

Signed at Houston, Texas, August 20, 1927.

For the Company:

(Sgd.) J. G. TORIAN,
Assistant to Vice President and General Manager.

For the Employees:

(Sgd.) F. C. EHLINGER,
General Chairman,

(Sgd.) A. G. BAKER,
Vice-General Chairman,

(Sgd.) DOUGLAS D. WADE,
General Secretary-Treasurer.

The Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

681 I said that this was the only letter that I could locate in my files. That was the only one that I could find. I do not know of any others that I hunted for and could not find. We are generally able to find them.

The next thing is the record showing how the $100,000.00 wage increase was distributed among the clerical employees. This is the record furnished to me showing the distribution between the Texas lines and the Louisiana lines. Outside of the vouchers and records which I have produced, there are no other records or memoranda that indicate any other disbursements made to these men, either directly or indirectly. That is all the money that was drawn in their favor by the railroad company. I haven't any record of anything paid out for account of the Association of Clerical Employees. The railroad company does not maintain any printing plant to any great extent. They have a small multigraphing plant in the Southern Pacific Building. They do print some few forms, a very few. I, as auditor or secretary, have no record of any multigraphing they might have done, if there was any done. The only thing I would really have a record of would be money paid out, vouchers. If the Southern Pacific Lines had printing done at Cargill's, or somebody else, those statements all passed through my office. Certainly the bill that comes from the printing house would have to show what was done. It would show 2000 envelopes, or 10,000 if it covered all that. Or 5000 letterheads. I would not know the exact printing that went on the letterheads exactly from the bill. I brought you all that I could readily
682 locate. I did not look through each printing bill. I could do that.

On Cross Examination, he testified:

With reference to these expense accounts, I do not know anything more about them than is shown in the voucher that has been introduced or the memorandums attached to it that have been introduced. I only know what is shown on the vouchers with reference to whether they relate to expenses incurred by these parties in the service of the railroad company or in the service of the Association.

The usual custom and practice with reference to men occupying the positions which these men asked about occupy, is that in the transaction of business for the railroad company they are usually allowed their expenses when they are traveling on company business. So far as I know this record which I have identified here does not contain a penny's worth of expense except what was legitimately expended in behalf of the railroad company for its purposes. I do not know that they include a penny expended for the Association of Railway Clerks. I only know what is shown on the vouchers. Those kind of expense accounts are allowed for that class of employees all the time during the performance of their duties. I do not mean by that that every employee has an expense account like that.

Upon Examination by the Court, he testified:

This voucher to Ehlinger, chief clerk, is for expenses incurred during the month of June, 1927, while engaged in the ordinary duties as chief clerk to superintendent and is shown in detail on form 183, itemized
683 statement of personal expenses, and then follows the details. All that I know about this account is what is shown on the voucher, and it is

approved by the division superintendent. We accept his approval as being correct. I don't know what particular kind of business he was on when he incurred this. I take the approval of the superintendent, the man for whom he was working as my proper authority to pay the vouchers. That is all that I know about these vouchers. I don't know whether they had anything to do with the Association of Clerical Employees or not. Whenever a person presents an expense account approved by persons authorized to approve expense accounts, we pass them, or approve them.

On Re-Direct Examination, he testified:

As a matter of fact vouchers are issued upon the authority of officers of the company, approved, to different employees who do various things on behalf of the company, something unusual, something trivial, or something.

J. G. MILLER, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is J. G. Miller. I came to Houston in April, 1925, and have lived in Houston since. I have worked for the defendant railroad company, Southern Pacific Lines, from April 1, 1927 to August 20, 1927. I was employed under Mr. J. A. Sanders and Mr. C. E. Armstrong in the local freight office of the Southern Pacific Lines from April to August of last year as a clerical employee. Along about the 10th of June of last
684 year Mr. C. E. Armstrong approached me with a petition and offered $75,000.00 to be dis-

tributed among the clerks if we signed this petition which had reference to the Association of Railway Clerks. I, being a member of the Brotherhood, flatly refused to sign the petition which Mr. Armstrong presented to me. When he presented it to me, he just laid the petition down in front of me and asked me if I would sign it, that it meant an increase in wages to the clerical employees in Texas and Louisiana on the T. & N. O., and I didn't see where I could sign it, being a member of the Brotherhood of Railway Clerks. I had been a member for eight years. I just told him that I did not care to sign the petition. Mr. Armstrong was assistant agent at that time, over me. I don't know if any specific occasion on which Mr. Armstrong discharged a man while I was in the service of the company. He hired me. He took my application and put me to work. He put me to work even without an application, and three days afterwards I filled out an application and it went to the superintendent's office to be approved. Mr. Armstrong employed me in April, 1927. He was holding the same position and the same general kind of duties in June 1927 when he had this conversation with me. I know that he employed other clerical employees other than myself. I have now stated substantially all that occurred between Mr. Armstrong and I in that local freight office in June, 1927. It occurred at my desk. He came to my desk. I saw him approach other clerks, all in that end of the office. There were approximately twenty in that end of the office that I saw him approach. The thing which he pre-
685 sented to them to sign was not placed out before the clerks. We did not know who signed the petition.

I know J. C. McDaniels. In the early part of July, 1927, Mr. McDaniels approached me in the office and instructed me to go to the agent's office where they were holding some kind of a conference. My desk, the place where I did my ordinary clerical duties, at that time I would say was 300 feet from the agent's office. I walked into the agent's office with Mr. McDaniels and at the time I was introduced to Mr. Derrington. It was within thirty days after the occurrence wherein I declined to sign that petition which Mr. Armstrong, the assistant agent, presented to me, that Mr. McDaniels instructed me to go to the agent's office for this talk. I found Mr. Derrington in the agent's office. Derrington was the chief clerk to the superintendent of terminals. In the office there when that occurred were other clerical employees from the local office, Smith, Wilson and Mr. O'Farrell, Sr. There's two O'Farrells in the office. Mr. McDaniels of course was there, Mr. Derrington whom I was introduced to and Mr. Sanders was at his desk. Mr. Sanders was local freight agent at that time. That was in the private office of Sanders, the local freight agent. Well, I was introduced to Mr. Derrington and his title mentioned, of course, and I don't know just what was said at first, but he finally asked us our names and positions and whether we were members of the Brotherhood of Railway Clerks, each in turn. Of course

686 I stated that I was a member of the Brotherhood of Railway Clerks and had been for eight years. He went on down the line and asked the others the same question, taking a record of it and putting it down on paper, whether we were or were not members of the Brotherhood of Railway Clerks. And then he stated that he was in a position to know that the railroad company would grant an increase through an

organization other than the Brotherhood of Railway Clerks but would not grant an increase through the Brotherhood of Railway Clerks. Of course that brought on a little talk and I asked him about the Railway Labor Act and a few other things, and he showed me a pamphlet that he stated was the Railway Labor Act and at that time I believe Mr. Neff was holding, was acting as arbitrator for the clerks, and was in session at that time, or about that time. I did not attend those sessions or know anything about them. Only there were bulletins on the bulletin board that such things were going on.

(The Defendant thereupon objected that the witness confine himself to what he knows, which objection was overruled by the Court after the witness had made the following answer to a question of the Court):

Q. You mean that you discussed with Derrington the fact that Neff was here, or are you just stating that?

A. Well, it was brought up from time to time in the conversation. I could not say just exactly the wording. The fact that there was to be an arbitration or that it was in session, is what I mean.

Well, the discussion went on, I don't know just exactly how to word it, or how it was said, but it
687 come to the Labor Act, Mr. Derrington picked out different parts of the Labor Act and stated that the railroad company did not have to mediate or arbitrate according to the Railway Labor Act, that he was in a position to know that we would be granted an increase through their organization other than through the Brotherhood of Railway Clerks. There was quite a bit of discussion but I could not say just positively what it was. Those were the few points that were im-

pressed on me more than anything else. I told him that I had been indirectly in the service of the railroad company for the past eight years, and that my salary was $4.40 and I stated my experience here and there along the line of the S. A. & A. P. Demurrage Bureau and so forth, and Mr. Derrington made the statement just as I was leaving the office that at any time I turned the other way to come to him. I did not sign this petition which they had. There might have been something else occurred there or said there which I have not stated, but it was not impressed on me to the extent that I might tell the truth about it. I am afraid to say the things that probably might occur to me later that I am not exactly positive of. When this conversation was going on, I was sitting at the end of the table with my right side to Mr. Sanders. I could have taken two or three steps and touched his desk. He positively could hear what was being said. I am not in the service of the railroad company now, I am with the Standard Rice Company.

I left the service of the railroad company for a better position for one thing, that is what I think will
688 terminate into a better position, because I figured —I left voluntarily.

(The Plaintiff, through its counsel, stated to the Court that they wished to ask the witness what effect, if any, the situation created on the matter of influence by these two requests which he has detailed created, and what action, if any, he took by reason of them.)

To which counsel for defendant objected as follows: "He has already stated that he declined to sign. He remained in the service as long as he wanted to and he voluntarily retired because he was getting a better position. That covers the whole thing.

Which objection was by the Court overruled with the statement that the Court would allow the plaintiff to offer the proof and then entertain a motion from counsel to strike out.

(To which Defendant excepted.)

The Witness:

The first reason I left the employ of the defendant railroad company in August, 1927, was that I figured that I was bettering myself by going ahead and leaving the railroad company, although the Southern Pacific is a bigger field. I felt that my name was on the black list for making affidavits in this case and belonging to the Brotherhood and refusing to sign the petition, that is the secondary reason why I left. I felt that I could not go ahead on the Southern Pacific.

(Counsel for Defendant thereupon moved to strike out.)

(By the Court):

Q. Had anybody told you that if you didn't sign the petition that you would be black-listed, or did anybody say anything to you, did McDaniels or the other man who first spoke to you?

689 A. No, sir, but I felt that way because usually with petitions and things like that sent around by other clerks instead of men of position like Mr. Armstrong or Mr. Derrington or Mr. McDaniels, the chief clerk and assistant agent, don't usually bring those things around.

The Defendant:

This is all argument and we object to that.

The Court:

Well, I think it has a very remote, if any, relevancy. I will overrule the objection, however, and give you a bill.

The Defendant:

Note our exception.

On Cross Examination, he testified:

I got an increase in salary of about $15.00 a month at the Standard over what I was getting at the Southern Pacific. I have stated everything that I can recollect happened, all the conversation that occurred in the conference attended by Mr. Derrington, Mr. McDaniels and myself in Mr. Sanders' office. That is as far as I can recall. I heard some of Mr. Smith's testimony yesterday. He did not testify, that I remember of, to anything about the discussion of the mediation and things of that kind that were pending and the discussion of the Railway Labor Act that I testified about. He was there all the time that I was there. With reference to whether I heard him undertake to recite everything that happened,—that was my personal question to Mr. Derrington. Probably he did not pay much attention to it.

690 C. A. BRANDIN, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is C. A. Brandin. I have lived here in Houston since 1923, and have been employed by the defendant railroad company since July, 1923, until

the present time, and am still in their employ. Along in June of last year the service I was doing was clerical work, O. S. and D. clerk. O. S. and D. means over, short and damaged. That is over in the local freight office.

Somewhere about the 10th of June, 1927, Mr. C. E. Armstrong, assistant agent, with Mr. T. D. Elam, chief clerk, approached me with respect to joining what the clerks ordinarily call the "Company Union", the clerical association. Elam was chief clerk to Mr. J. A. Sanders, local freight agent. To tell exactly what occurred, what they said, and what I said and what we did: Well, Mr. Armstrong came up to my desk and he had a petition. He laid it on my desk. He said to me "old man, I know what I am up against, but I am instructed to pass this thing and I am just complying with instructions." I told him "Mr. Armstrong, I am glad you admit that you were instructed because I thought that you were really too much of a man to participate in such actions," or words to that effect, and he says "well, the company tells me," or "they tell me," I don't know whether he said "the company" or not, "but they tell me that they have $75,000.00 to distribute among the clerical employees if we can get a majority to sign up with the clerical association." Well, there was possibly some little discussion and I declined
691 to sign it and Mr. Armstrong passed it on and Mr. Elam didn't take any part in it at my desk.

There was something said with reference to whether or not any raise or an increase in pay might be secured through the Brotherhood of Railway Clerks. He told me that they had absolutely refused to grant any increase through the Brotherhood but would grant this increase through the Association. My answer to that

was: I told them that unless I could secure an increase through a legitimate labor organization I was satisfied to continue at my present rate of pay. I do not think there was anything else said or done there that I now recall. I don't recall any further conversations. Now later on, in July of 1927, as to anything further occurring with reference to any other efforts to get me to join the clerical association, or anything of that kind,—on July 7th, I think the date is, while at my desk, Mr. McDaniels came and told me that I was wanted in the agent's office. Without any excuse, rhyme or reason, I went over into the agent's office. There I found Mr. Derrington, chief clerk to the superintendent of terminals, Mr. J. A. Sanders, local freight agent, and Mrs. C. E. Allen, the local agent's secretary, or stenographer, at their desk, and Mr. Derrington,—well, about that time Miss O'Connor, stenographer in the claim department, and Mr. A. T. Robideaux, the chief claim clerk in the local freight office. They came in with Mr. McDaniels. Mr. Derrington says to me "are there any other officers of the Brotherhood employed here?"

I answered "no". He said "how about Mr.
692 Daniels?" I said "Mr. Daniels is president of Houston Local 28, but not an officer of the Brotherhood, that is in respect to matters pertaining solely to the Southern Pacific clerks." He said "well, we will get Mr. Daniels." So they, one of the ladies out of Mr. Daniels department passed and they asked her if she would tell Mr. Daniels to come up into Mr. Sanders' office. A few minutes later Mr. Daniels came in and Mr. Derrington began to tell us his mission, which was to secure members for the clerical association, and he had with him a copy of the Railway Transportation Act and he didn't ask so many questions, he branched off

into reading this Transportation Act and asked us whether we were familiar with it. I told him only up to a certain extent was I familiar or had any knowledge of it. Then I think Mr. Daniels took up the conversation and something come up about Mr. Neff being in town relative to mediating our wage question, and Mr. Derrington suggested that in case that Mr. Neff's efforts were a failure that the law did not provide for forceful arbitration and we had no method to force the company into arbitration other than a strike. That the only course left open to us was to strike. I told Mr. Derrington that we had officers of this Brotherhood paid to represent our interests, drawing their money from us, and that we were leaving those matters up to the officers of the organization. And Miss O'Connor asked Mr. Derrington if the company wanted to grant us an increase in salary why they waited until the Brotherhood had secured a mediator on the ground to grant it.

693 And we possibly had some other little discussion, I don't recall just what it was, and started to pass out. Mr. Derrington had, as I recall, some applications on the desk and he said, "well take one of these with you and you may sign it later." These were applications to membership in the association, I reckon. I didn't take one. I do not recall what reply he made to the young lady who asked the question that if the company wanted to grant this increase why they didn't do it before the clerks got the United States mediato here, I don't think he answered. There is not anything else that occurs to me now, that I now recall. I don't recall anything further.

On Examination by the Court, he testified:

I did testify to a conversation being had by Derrington other than what I said the girl asked him about money, about the company having money to give the clerks. I did say something about his having said something about it. He told us that he was in a position to know that the company would grant us an increase of $75,000.00 or $100,000.00, I don't recall which Mr. Derrington said, if and when we got a majority of the employees to sign up with the "company union." I think that was prior to the time this girl asked him why they were waiting on it, prior to her asking that question.

I did not sign. I didn't see anybody else sign. I do not know whether any of them did or not at that time, that is I know that they didn't at that time. I have no positive knowledge whether any of them signed later.

694 On further Direct Examination, he testified:

Relative to your attention being directed to the fact that I also had a conference or a visit along with some clerical employees, to Mr. Lull's office about September 6th of last year, and what occurred there: I think on September 6th I received a telegram from Mr. Harper saying that Mr. Lull had granted a conference and asked that I make arrangements with Mr. Sanders, the local agent, to permit Mr. Griffith and I to attend that conference. I took the matter up with Mr. Sanders and he granted us the permission and we did in company with Mr. Harper, Mr. Walker and Mr. Moulin from New Orleans attend the conference in Mr. Lull's office. During that conference Mr. Harper took the matter of the trouble that we were in up with Mr. Lull and he asked Mr. Lull if he could not suggest some method of

peaceful settlement. We could not get any satisfactory answer from Mr. Lull. In fact Mr. Lull just said that they had considered the matter and decided that the clerical association represented a majority of employees and that would be his answer for the present. On one occasion Mr. Lull told Mr. Harper that he was in the position of a salesman and he would frankly say himself a good salesman. At that time I told Mr. Lull that Mr. Harper was in the employ of the clerks, that it was within our province to fire Mr. Harper if he did not bend his efforts to our best interest. Mr. Harper told Mr. Lull that we had filed in this Court approximately 1,200 authorizations obtained without any great effort on our part and they were a matter of record and we believed that we were entitled to represent the
695 clerks. Mr. Lull would not give it any consideration. So, after about three or four hours in Mr. Lull's office the conference was over. My pay was docked for the time I was absent from my clerical duties in the local freight office on that occasion.

On Examination by the Court, he testified:

I had had experience in going on committees before to the officers in connection with the Brotherhood, but I always did it on my own time. I have been in the superintendent's office on several occasions in matters of this kind, not wage increases, but grievances. I imaginue it would be the practice of docking my pay in the past, because I never had the experience because I always arranged to go on my own time. I never had gone during working hours.

On Cross Examination, he testified:

My position as a Brotherhood member was well known to Mr. Derrington and these other people. I occupied an official position with the Brotherhood at that time, division chairman. I still occupy that position. If I recall correctly it was the year 1925 that I was elected to that place. I was elected and not appointed by Mr. Harper as Mr. Griffith was. Twice there has been an increase in my compensation during the time that I have been with the railroad company from time to time. In 1923 we secured a two cent increase through the Labor Board. In 1926,—I mean in 1927, in August, why we secured another increase. That was the increase that I got through this association agreement.

696 A. B. NIAS, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is A. B. Nias. I have lived in Houston fifteen years. I have worked for the defendant railroad company ten years, a clerical employee. Last year I was working in the local freight office of the Southern Pacific.

Along about the 10th of June of last year Mr. C. E. Armstrong, assistant agent, approached me with reference to joining the so called "company union". I was working under him then, at that time. He said, "Boys, I have been placed in an embarrassing position," he says, "but I have a petition and if we can secure 51 per cent of the membership in the association," he was in a position to know that we would get an increase of $75,000.00, an increase in pay, and that he knew that we would not get a nickel increase through the Brotherhood of Rail-

way Clerks. I told him that I could not sign it. There was nothing else, that was all. That was the up-shot of the entire interview. Mr. Armstrong interviewed me at the correction desk occupied by Mr. O'Farrell. As to working there, well, I had gone there to have a correction fixed up or something. I don't recall now just what it was but I happened to be standing at the desk. As to whether he presented this petition to the other clerks there, he presented it to Mr. O'Farrell and he said that he could not sign it. I don't know whether he presented it to any one else or not, I don't believe he did. Now along in July a few weeks later than that, as to whether there was anything else occurred with reference to the same matter, I was instructed to go into
697 the agent's office. Well, I was not instructed, the stenographer called me in the office and told me I was wanted in the agent's office. So, I went to the agent's office and I was introduced to Mr. Derrington by Mr. McDaniels, that is the chief clerk of the superintendent. Mr. Derrington asked me—well, he asked me my initials first, and then asked me if I was a member of the Brotherhood of Railway Clerks and I told him that I was and had been for eight years and he said,—let's see—he said he was in a position to know that we would not get an increase with the Brotherhood of Railway Clerks but we would get a substantial increase if we would join the association, and I also told him that I could not sign it. That is about the gist of what occurred there. And, he said that he knew that my position was not being paid enough, that I was not being paid enough for the position that I was holding and that they had tried on several occasions prior to that to get former cashiers an increase on that particular job but they could not do it. I later got an

increase in my rate per hour on that job through the association. With reference to that being out of the $100,000.00 increase, or whatever it was, well, he did not specify any amount. He just said a substantial increase. The increase which I got through the clerical association came out of that $75,000.00 or $100,000.00 increase which was given last August. I am not still there now. I left on February 7th of this year. I was given the privilege of resigning or being fired for violation of instructions contained in circular 39,—Circular 89, that is
698 instructions to station agents. It is mishandling of 'shippers order notify' freight. I don't believe I had mishandled it.

I did make an affidavit which was filed in the original proceedings in this case covering substantially the things which I have testified to about Mr. Armstrong approaching me and about Derrington and McDaniels calling me to the agent's office and approaching me.

On Examination by the Court, he testified:

I was discharged about February 7th of this year. I was given the privilege of resigning or being fired, and I told them that I did not feel like resigning, that I had not done anything to resign for, and they suspended me and I asked for a hearing which was granted on February 17th, and Mr. Harper and Mr. Walker and myself called on Mr. Marshall, the superintendent. Mr. Marshall asked me if I was ready for my hearing. I told him that I was. He asked me who I wanted to represent me and I told him Mr. Harper and Mr. Walker. He said he was very sorry but he could not deal with these two men but if I wanted to pick out any other employee of my own choosing, that he would give me a hearing at any date. I didn't do anything else about it. That's the end of the story.

On Cross Examination, he testified:

I was cashier in charge of the collection of monies due the company. To cash patrons I was charged with the duty of seeing that shipments are not delivered without surrender of bills of lading when they are 'shippers order notify' shipments, but there was an assistant
699 chief clerk had been assigned to those duties at the local freight office here at Houston. I had something to do with it on the cash patrons. I was charged with the duty also of seeing where the shippers had a bond, that the bond would not be exceeded. With reference to whether in the face of that my department, the department under my supervision, let a man named Joe Jamail get into the company about $4,000.00 in freight when he had a freight bond for only $2,000.00, I will state that at the time that they blew up Joe Jamail didn't exceed his bond. The cars were on the track and had not been delivered. I know that from the freight bills that I had in the cashier's office at that time. If there were any way bills held up upstairs I didn't know anything about it. They come through afterwards. It is a fact that I was charged with the duty of seeing that patrons of the company did not exceed freight bonds. But as to its being a fact, and my knowing it, that Jamail had exceeded his freight bond by more than $2,000.00,—well, he did after they closed up his cars. It is a fact that they closed up his cars because he was getting in his cars without having obtained the right to do so, and that it has cost the company about $18,000.00 in all, and that my office has got a good deal to do with that, and that I was discharged for that

On Examination by the Court, he testified:

With reference to my saying that I had not been discharged, will state that I had been suspended. I understand that I am still on suspension. I haven't yet been discharged that I know of. I haven't
709 had any official notice of it.

With reference to the outcome of the hearing at the time that I said I wanted these men to represent me and they said they couldn't do it, Mr. Marshall told us, or told me rather, that at any time that he would hold the case in suspense until such time as I saw fit to pick out some other employee of my own choosing other than Mr. Harper or Mr. Walker, and since that time I haven't saw fit to pick out any other employees, so the case stands as is.

On Further Cross Examination, he testified:

Harper did ask that my hearing be postponed after Mr. Marshall said that he could not recognize these two men.

A. R. CAMPBELL, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is A. R. Campbell. I have lived in Houston since August, '23. I have worked for the defendant railroad company since that time, August 27th, I think it was, 1923, as a clerical employee here in Houston. Last year I was working as a clerical employee over in the local office. Along in June of 1927 Mr. Armstrong approached me in reference to the matter of representation of clerical employees. He is the assistant agent under whom I worked. He presented to me this petition without hardly saying a word.

On Examination by the Court, he testified:

That was Mr. C. E. Armstrong. He was assistant agent under Mr. J. A. Sanders in the local freight office. I just glanced at it, did not read it. It was
780½ rumored that it was coming around. I knew pretty much the substance of it and I noticed the top of it "employees—Association of Clerical Employees," or something like that. We spoke of it as the "company union," and I just glanced at it, looked at the names on it, it had four names on it at the time. I can name them almost in order. I handed it back to him and just shook my head, just said that I didn't care to sign it. Made no comment at all. He started to walk off, then he said, "well, they tell me they have $75,000.00 to grant as an increase to the clerical employees, but that they won't grant a cent through the Brotherhood of Railway Clerks." That's what he said.

On further Direct Examination, he testified:

That is about all there was to that occurrence. I didn't get into any argument, didn't discuss it at all. With Mr. Armstrong was Mr. C. S. Lipscomb, the warehouse foreman, who I was directly under. I was working in the warehouse at that time. Armstrong was over Lipscomb. Lipscomb was over me. The two of them were together. As to what authority those men had over me, Mr. Lipscomb hired me, and Mr. Armstrong was over him. With reference to whether Mr. Armstrong hired and fired all those clerical employees over there, I don't know of any cases of him ever firing any one, but I do know where he hired several. In any event Lipscomb hired me. He was with Mr. Armstrong when

Armstrong approached me. He had nothing at all to say. Mr. Lipscomb had not signed the thing that I say the four men had signed, not at the time that it was presented to me. Some other four names were
701 on it. I will name them if you care to.

L. L. ELLIS, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is L. L. Ellis. I have lived in Houston about twenty years. I am a married man. I have worked for the defendant railroad company since 1919, as a clerical employee continuously.

Along about June of last year Mr. C. E. Armstrong, the assistant agent came to me with a petition and came to my desk and stated that if the company could get 51 per cent of the clerks they would grant an increase but would not grant it through the Brotherhood of Railway Clerks. By getting them I mean, I suppose if he could get the signatures on his petition, of 51 per cent. I didn't read the petition fully that he had. I just glanced at it. It has something pertaining to authorization for some one to represent the association of railway clerks. I was working under Armstrong at that time. With reference to whether Mr. Armstrong employed and discharged the ordinary clerks, will state that he employed us. I don't know of a case that he discharged. I was not present in the office at some later date or something. That was all that occurred with reference to me. I did not sign.

J. D. GUIDRY, called as a witness for complainants, and having been duly sworn, testified as follows:

702 My name is J. D. Guidry. I have lived in Houston since September, 1924. I have worked for the defendant railroad company since September, 1924, up to the present time. I am a clerical employee of that company, in the local freight office.

Along in June of 1927 some one did approach me concerning who would represent me with reference to wages or working conditions—Mr. C. E. Armstrong came to my desk and laid over a petition to secure 50 per cent of the signatures and to grant an increase of $75,000.00 provided that 52 per cent of the signatures were secured but would not grant an increase through the Brotherhood of Railway Clerks. I then asked him, I said, "Mr. Armstrong, why didn't the management offer this before the clerks had filed a request for an increase?" He said to me, "I am not open for any argument." Then I declined to sign the same stating that I would wait for the outcome. I was working under Armstrong at that time. That was all that occurred there at that time. Later in July of that year something did occur with reference to the same matter. I was called into the agent's office by Mr. J. C. McDaniels, chief clerk in Englewood yards. This Englewood yard office is four or five miles from the local freight office. Mr. McDaniels comes down there frequently to the local freight office. I say that on this occasion he told me that I was wanted in the agent's office. Concerning what happened in the agent's office, when I got in there, there was Mr. Derrington and two other employees and Mr. Sanders, the local freight agent, and Mrs. Allen, the stenographer. McDaniels came in there along
703 with us. Mr. Derrington then started to asking us individually our names and titles of position and asked me, making notation of same, and asked

me whether I was a member of the Brotherhood of Railway Clerks or not. I said yes, I was a member of the Brotherhood of Railway Clerks. He said this, the fact that the management had an increase of wages of about $75,000.00 provided that we would petition the management with a majority of signatures and that the management would not grant the Brotherhood of Railway Clerks an increase but would grant an increase through the organization he and Mr. McDaniels were sponsoring. Nothing else occurred that I can recall exactly. Of course there were a few other words with the other employees but I didn't take no interest in it. Neither of the other two were in there when I was asked to sign it. I didn't sign it. Mr. Sanders was as close to me, as close to this conference, about to the end of the table right there, about eight or ten feet from me, something. I presume he could hear what was going on if he would be paying attention to it. He was close enough.

J. A. WARD, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is J. A. Ward. It will be five years in June that I have lived in Houston. I have worked for the Southern Pacific, the defendant Southern Pacific Lines, since July, 1923, continuously up to the present time. I was one of their clerical employees. I worked in the local freight office in Houston. Along in June
704 of 1927 some one did approach me with reference to who would represent the clerks. To tell you what happened in my own way, well, the warehouse foreman, Mr. C. S. Lipscomb, and assistant agent, Mr.

C. E. Armstrong, brought a petition around and asked me to sign it but there was very little said. He handed me the petition and I read it and he told me that the management was ready to give us an increase if properly petitioned, but that they would not give us an increase through the Brotherhood of Railway Clerks and I passed it back to him. I told him that I did not care to sign it. Nothing else was said or done. I was working under both Armstrong and Lipscomb. I was working out in the warehouse, check clerk. It is my understanding that Armstrong hired and fired clerks over there. However, I don't know it to be a positive fact. Mr. Lipscomb hired me. Mr. Armstrong is over Mr. Lipscomb. Mr. Lipscomb is the man who directed my work, he was warehouse foreman.

On Cross Examination, he testified:

Mr. Lipscomb employed me but I had to be approved by the general agent, Mr. Sanders. I understood that while he conversed with me and put me to work that I was not an employee of the Southern Pacific until Mr. Sanders approved it. Neither Mr. Lipscomb, nor Mr. Armstrong ever attempted to discharge anybody to my knowledge. I am still in the employ of the Southern Pacific. My wages have been increased in the last year or so. The job that I was on was increased ten cents a day along in the fall. I don't remember
705 the exact date. I am a member of the Brotherhood, and my membership in the Brotherhood was known to Mr. Lipscomb and to Mr. Armstrong.

J. W. WADE, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is Mr. J. W. Wade. I have lived in Houston about ten years. I have worked for the defendant railroad company as a clerical employee seven years. I am not with them now. Along in June of 1927 I was working over in the local freight office as a clerical employee.

With reference to what conversation, if any, Mr. C. E. Armstrong, the assistant agent in the local freight office, had with me about that time,—why Mr. Armstrong approached me with a petition, that is for the employees to sign, those that wished to be represented by the association of clerical employees. He did say something to me. He handed it to me and I read it. I told him that I would not care to sign it, that I would not be interested, and he told me that he understood that the management had $75,000.00 to be distributed among the clerks in Texas and Louisiana if they could get a majority, and I told him that I would not be interested in it. That is all that was said. I belonged to the Brotherhood then. With reference to whether Armstrong knew that, he did not ask me and I did not tell him. The only thing said about that was when he came in, he told me, he said, "I am no asking you whether you are a member of the Brotherhood or not." That is all that was said regarding the Brotherhood. He did offer me the petition to sign. He stated what I said and
706 I simply declined to sign it, I told him I would not be interested.

On Cross Examination, he testified:

I couldn't say if my position as a member of the Brotherhood was probably known to Mr. Armstrong. I should think it was generally known that I was a member

of the Brotherhood. I had not concealed that. I am not still in the employ of the company. I left it on October 4, 1927.

Stipulation:

It was agreed between counsel for complainant and defendant that the affidavit of R. E. Stotzer, sworn to by him under date of July 19, 1927, and attached to the Original Bill of Complaint, might be offered in evidence in lieu of his testimony, in behalf of complainants.

This affidavit having been heretofore made a part of this record as a part of the original bill of complaint herein, is here now referred to and made a part hereof as fully as though the same were at length set forth herein.

C. E. ARMSTRONG, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is C. E. Armstrong. For some time I was assistant agent at Houston of the Texas and New Orleans Railroad Company. For eleven years, up until February 1st of this year. With reference to the authority I had and exercised with respect to the control and supervision of ordinary clerical employees working at the station where I was employed as assist-
707 ant agent of the defendant railroad company: I had charge of the employing, that is, I took their applications and submitted same to our superintendent for his approval, and I also had to do with the overseeing of the affairs in general in and about the office, in other words the work done by the clerks was sup-

posed to have been supervised by me. With respect to applications for employment: The applicant's application was filled out by the party making the application of course, and it was submitted to the superintendent for his approval, but in most cases the employee was put to work subject to the acceptance of his application by the proper officer; the superintendent being the officer to whom the application was submitted for final approval. In rare cases the superintendent interviewed the men personally. I had charge of the direction of the employees in what to do and how to do it, and what job to go on and that sort of general supervision of the performance of their duties at the Houston office, but most of the employees that I employed were familiar with the class of work that they were being assigned to. I tried to employ to the greatest extent possible, experienced men. I didn't have any authority to discharge an employee. All that I could do was recommend. I could recommend. Some times my recommendations were accepted and sometimes rejected. The fact of the matter is I didn't have very many of them to make.

Upon Examination by the Court, he testified:

My position was one in which I was generally charged with the duty of taking applications and putting men to work, subject to the final employment by
708 the superintendent. If the work was not going along right it was my duty to advise the persons above me about it. The matter of hiring and firing was usually handled on my recommendation. I say my recommendation. I mean, the agent and myself. I was assistant agent and the agent was Mr. Sanders. Of course all these matters were first submitted to my

superior officer, which was Mr. Sanders, and he would pass them on to the next man. We two were supervising the clerks.

On further Direct Examination, he testified:

I have heard most everything that was said in the Court room during the testimony of yesterday afternoon up until noon of today by some eight or ten or twelve witnesses who testified with respect to my asking them about signing petitions to be represented by the clerical association. I have nothing in that to take any serious exception to. As far as I know every one on the job was asked to sign the same petitions or authorizations, by me. I was instructed to go around and ask all those men working under me to sign those authorizations, and to make the statements which I did make to them, by my superintendent, who was Mr. O'Donnell at that time. He is the man who was really over me, and Mr. Sanders. I think it was in June that Mr. O'Donnell had this conversation with me in which he asked me or directed me to do this. The exact date I don't remember. Mr. O'Donnell came to my desk one day and he said that the clerks, he understood that the clerks were going to ask for an increase in wages and
709 he said that the management would not recognize the Brotherhood of Railway Clerks and he further stated that it was his understanding that the company was willing to increase these clerks providing that they came to them in the right manner, that being through the railroad organization.

Upon Examination by the Court, he testified:

He did not use that term "railroad organization,"—through the Association of Railroad Clerks. And he said that he instructed that the next day or two that I canvas the job soliciting these clerks for membership in this order, which I did.

On further Direct Examination, he testified:

He said that he understood that the company was willing to grant them a slight increase, and he said that he thought that it would amount to approximately $75,000.00, and I passed this information on to the ones that I solicited. There was nothing said about the Association of Clerical Employees, about its former existence and the disputes and contentions that had existed between the Brotherhood of Railway Clerks on the one hand and the "company union" on the other back two or three years before, or three or four years before. There wasn't a thing said that I recall with reference to what the company itself, the railroad company management's attitude was towards this "company union", other than what I have already stated. I do not know whether Mr. O'Donnell made any request of others in authority like myself to pass those petitions around. I did not ask any one to pass them around or to do anything about passing them around; I handled it myself. With reference to what the witnesses said about Mr.
710 Lipscomb being with me down in the warehouse: Mr. Lipscomb was in charge of the warehouse employes and I asked Mr. Lipscomb to accompany me on this trip in order that he might hear everything that was said and done. I, as assistant agent, am not in fact eligible to membership in the Brotherhood of Railway Clerks. I was not one of the

same class of employees that would ordinarily be called clerical employees, who were seeking the increase; I was acting in a supervisory capacity.

Upon further Examination by the Court, he testified:

With reference to my statement that Mr. O'Donnell mentioned the name of the clerical employees and that was all he said: I knew what he was talking about because I had heard of them before. In fact, I was more or less familiar with them. We have had this Association of Clerical Employees on our line for quite a while. As far as I know, the Railway Association had never been dissolved. I knew of a controversy some time back as to representation. O'Donnell and I had never talked about that before. It was not necessary for him to tell me anything further because I knew what was wanted and my sympathy was with them. I was in favor of this railway union. With reference to what I was trying to do then that O'Donnell didn't tell me to do: What I had in mind was to get every employee that we had on our pay-rolls to sign this petition in favor of the railway association. That is what O'Donnell had suggested to me. We had the same idea about that. I did get some of them to sign. I am familiar with the fact that in August the association was recog-
711 nized by Mr. Torian and Mr. Waid, or the officials of the company. I cannot say whether some of the authorizations which they acted on were some that I had gotten. The ones that I got I turned over to our superintendent, Mr. O'Donnell. I did not deliver them to Derrington or Ehlinger; I gave them to Mr. O'Donnell in person. I was not collecting any of them for Derrington and Ehlinger. I was collecting them

for Mr. O'Donnell's office. I was not instructed to give them to Mr. O'Donnell in person, but it was most convenient to hand them to him at the time that I gave them to him. He did not tell me to whom to give them. He just told me to go get them, and when I got them I gave them to him. I got eight. I approached approximately ninety-two. The others refused to come in. I don't know whether they ever came in or not.

On further Direct Examination, he testified:

I don't know whether my solicitation had anything to do towards influencing those eight clerks who did sign, but I will say that they signed the petition. None of them appeared reluctant or said they were doing it because I asked them, or anything of that kind. Those that did sign appeared to sign the petition of their own free will.

On Examination by the Court, he testified:

I am not with the Southern Pacific at present. I am with the Missouri Pacific Lines now in the position of agent. I changed my employment on February 1st.

On further Direct Examination, he testified:

I left the company because there was another man placed on the job that I held over at the local
712 freight office. That was just some personal controversy between myself and somebody in the company.

On Examination by Defendant, he testified:

It grew out of the same matter that the witness, Nias, was involved in, I think.

On further Direct Examination, he testified:

I know J. C. McDaniels and C. W. Derrington. Derrington's job was chief clerk to the superintendent of terminals, D'Donnell, the man who was over me.

Mr. Derrington has charge of the Superintendent of Terminals office and he handles all matters pertaining to the affairs of this office and ordinarily most of the instructions are issued, I suppose, by Mr. Derrington, over the Superintendent of Terminals' signature. There are times, however, that the superintendent happens by and he might make some request which he wishes carried out. I will state, however, that Mr. Derrington is recognized as the superintendent of terminals as far as our office is concerned. What he says is the word with the bark on it, as far as the practical operation of the railroad is concerned. Mr. McDaniels, out there at the Englewood yard office, as I understand it, has charge of the affairs of that particular office the same as Mr. Derrington does in the superintendent's office. Just how far his jurisdiction goes, I don't know. I don't know just what duties might be assigned to him. I will say that ten or twelve clerks work under him there. I understand that he has the right to hire and fire those men. He has the same working conditions that
713 we have. I don't think he could discharge a man. I never have known of him discharging a man. In fact, he has the same instructions that I have. I could not fire anybody. Mr. J. C. McDaniels at the Englewood yards has about the same authority with respect to that office, that Mr. Sanders and I had at the local office. The same rules prevail at both offices. Out there at the Englewood office, the yard master is over him.

Upon Examination by the Court, he testified:

I did not say that McDaniels as chief clerk had the same place as an agent. With reference to the difference in the company structure between an agent and a chief clerk: An agent with a railroad is generally in charge of the station. The yard is a different branch of railroad work. That is where they handle their trains and switch the cars. They don't have any agent there. The agent in the yard is the yard master. The yard master is the agent in that place just like Sanders was the agent where I was. The yard master doesn't have an assistant agent. He is a chief clerk. The chief clerk in the actual duties supervises the work of the clerks just like I do the work of the clerks where Sanders is. We have a chief clerk where I am. That was Mr. Elam. He is chief clerk to the agent. This office is a larger office and they require more supervising force. There is no difference between the assistant agent and the chief clerk, only the title. I really don't know whether the chief clerk would be entitled to join either of these associations according to the methods and standards. I said that I wasn't. I was never asked to join
714 and I did not join. I don't know. As to the exercise of authorities and duties, Elam and I are practically the same thing. We had a different line of work. He handled one feature and I handled the other. In the yards the yardmaster had a chief clerk and did not have an assistant agent because he had a smaller body of men. I could sign vouchers but he could not. He did not have that authority. Outside of that, I don't know of anything that he could not do that I did. I think the chief clerk to the yardmaster would have just as much authority as Elam but he follows a different line of work. I can't make you any comparison as to that.

On Cross Examination, he testified:

I secured out of the ninety some odd employees under the agent here eight signatures. All the balance of them refused to sign, or failed to sign. With reference to whether a great many more affirmatively told me that they would not sign than the eight who did sign, such as men lik' Griffith and Nias and men of that type, well out of ninety-two employees there were eight signed, so that would be eighty-four that refused to sign.

F. C. EHLINGER, called as a witness for complainants, and having been duly sworn, testified as follows:

My name is F. C. Ehlinger. I am the chief clerk to the superintendent of the Dallas Division of the defendant railroad company. I have occupied that position seven years at Ennis and five at Austin. My rate of pay is $270.00 a month. I believe it was about
715 $260.72 before it was increased. I don't remember the odd cents.

The superintendent of the Dallas Division is the official of the railroad company who is in charge of that particular division. His name is B. S. Holliman. That division operates from Houston to Denison, including the Waco Branch and the Fort Worth Branch. Its southern terminus is Eureka, which is the Houston yard limits on the west, of the Southern Pacific. It extends to the Houston yard limits but not within it.

I originated the so called Association of Clerical Employees during a controversy over representation of the clerks some years ago. I was permanently and actively connected with it during that time.

Q. Now when was it that it was determined by the Railroad Labor Board by some secret ballot or something that the Brotherhood of Railway Clerks should represent the clerical employees, and that your organization would not?

The Defendant:

That is assuming a great deal that is not in evidence and we object to the facts assumed, until proved that they are not in existence.

(Which objection was overruled by the Court, to which Defendant excepted.)

A. I don't remember the exact date but I believe it was the latter part of 1923 or the first part of 1924, some time along there.

The Witness:

There was a controversy before the Railroad Labor Board. The culmination of it, briefly, was a secret ballot of the clerical employees.

716 Q. The question is, that controversy culminated in a secret ballot, the result of which was, briefly stated, that more clerical employees expressed the desire to have the Brotherhood of Railway Clerks represent them than expressed the desire to have your organization represent them?

(To which Defendant objected on the ground that the best evidence would be the proceedings.)

The Court:

Overrule the objection. This man said that he was the head of one of them. If he don't know it, I don't know who would know it. In fact I know it is so. In

addition to that it is not a matter of formal decision. It is just a question of laying the back ground for the proceedings. I overrule the objection.

(To which the Defendant excepted.)

A. It did not culminate at that time.

The Witness:

That happened along in 1923. I don't know just how you mean by the statement that from that time on the Brotherhood of Railway Clerks did represent the clerical employees of the Southern Pacific Lines in Texas and Louisiana outside of the general office force up until recently. In a general way they did act for them with respect to wages and working conditions and grievances and holidays and such matters as the clerical employees on the one hand had to combat or contend with the company on the other hand. During that time, from 1923 up to the spring of 1927, this organization of Clerical Employees with which I was connected lay more or less dormant. In about June, 1927, it became
717 much more active than it had been for the three or four years prior to that time. The commencement of this renewed activity was probably about the latter part of May, 1927. I don't recall whether there was some meeting or something of that kind on that exact date. In June there was. I attended the meeting which was in Houston. I could not say the date of it. That would be entirely from memory, but I believe it was about the middle of June some time. Representatives from practically every division on the system were present at the meeting. The number aggregated approximately twelve or fifteen. I believe the meeting

was held in one of the vacant offices of the Grand Central Depot Building. I issued the call for the meeting. I haven't got a copy of it with me. I could not say when I issued it, but several days in advance of the meeting. A little bit after that meeting, about the early part of June, 1927, I did solicit men on the Dallas Division, clerical employees, to join that organization that I was interested in promoting; as many as I could reach. For the most part those men were clerical employees of the defendant railroad company on my division. I think I succeeded in soliciting not most of the men on my division but a majority of them. I did what I could to get them to sign these authorizations to represent them. The authorizations which I had to be signed and which I undertook to get them to sign was in substance designating this organization which I was interested in as a representative of the clerical employees of the defendant railroad company. I used whatever influence or persuasion I could in a way that I deemed
718 proper to get those clerical employees to sign up the authority for me and my organization to represent them. It would be impossible to state at what places I solicited these employees. I suppose I made every possible station that I could. I would say, to give you some idea of it, Mexia, Hearne, Bryan, Dallas, Fort Worth; a number of points. I would have to name you about seventy stations on the Dallas Division if I were to attempt to name the others. I believe that I got most of the stations on the Dallas Division, except the smaller ones. About seventy in number. I personally visited as many of these stations as I could. We don't have as many as sixty stations at which clerks are employed. Probably fifty of them would have clerks. Of that number there may be only one or two men and you

would not want to spend an entire day trying to get a man at some outlying point, consequently we would not attempt to get there. I would not think that there were as many as twenty or twenty-five stations that I personally visited; probably fifteen. That would be the largest stations on our division, including those that I mentioned, and about ten others, perhaps. When I went to some of the larger stations I spent probably a half an hour or an hour. I would not stop at the station all day; nor would I stay in the place all day. If I went to Mexia or Ennis I would not spend a day there necessarily. It just depends on the train service and the means for getting away from there. Whether my purpose in going there was in short to interview as many of the clerical employees as I could depended on other work that I might have found it convenient to handle
719 while I was there. I visited those fifteen or more places, from the time I started that up until the present time. I started about the middle of May. When I got the idea or conceived the idea and when I acted upon the idea that I told you a while ago of resurrecting this Association of Clerical Employees, I began to get authorizations about the middle of May. That was prior to this meeting in Houston which representatives of different places attended. I got my division signed up a little in advance of the general conference in Houston. During June and July I was pretty active in doing that. I got all I could within the time, reasonably, and I am still getting them as far as that is concerned. I am more or less as active as I was then. My office is in the superintendent's office at Ennis. My duties consist principally of handling the office routine in the office at Ennis. I handle all the routine matters coming under the superintendent's juris-

diction in the way of mail reports and such as that. A year ago when we had no activity on about clerical association matters, whether I was at my office or away mostly depended on the nature of my duties. Some times I am called away on work, and other times I may spend several months in the office. My principal duties are in the office. Probably there would be a month that I would not leave the office at all. Practically every month I have something to do on the outside, or in the general offices at Houston. Those duties would be the handling, looking into certain reports or statistical
720 data that was being collected, something in the case at present, there are some statistics on cotton that are being worked up, I found it necessary to work up certain data of that kind, sometimes necessitating getting out on the road and collecting information from the different stations. I don't recall whether between January, a year ago, 1927, and May of 1927, I was out of the office much or not; I have been in and out for about 15 years and I could not say whether during that period I was in or out. When I was actively working on this Association, I was probably out of my office a little bit more than ordinarily. When I went out over our division getting these authorizations and trying to, I made it convenient to arrange my trips at a time when I could handle other work of that kind. I could not swear exactly that I had something to do at Mexia, for instance, besides this company union business. I could not swear that there was something else that took me there, that I had a thing to do at these places; Right at this time I could not swear that I was even there, because I made no record of it. I probably did go to some of these places along about in June, 1927, some of these 15 places that I said I went to, for the

sole purpose of getting these authorizations that I said that I could get. The railroad company paid, partially paid my expenses on some or all of those trips. They did not pay whatever I turned in. They paid me my personal expenses which I turned in to them. These vouchers, five vouchers, one for the month of June, 1927, two for the month of July, 1927, and two for the month of August, 1927, being made to me, covered my expenses on those trips during the time I was away from
721 the office during those months.

Stipulation:

It was agreed between counsel for respective parties that Ehlinger and others turned in as expenses chargeable to the company which were so allowed, expenses incurred by them in connection with the getting of the signatures.

Mr. Carter:

And this witness' testimony here shows it and we concede it, that his expenses were paid by the Railroad Company at a time when he was soliciting members to join this Clerical Association.

The Court:

And that they were properly chargeable to the Company and paid by them, and that they knew what they were.

Mr. Tallichet:

We knew that through the superintendent.

On Examination by the Court, he testified:

I am not positive that the superintendent knew that we were charging to the company expenses for getting these names, but I assume that he did. I do not think that I was cheating, or taking from the company improperly. I did not let my superior know what I was charging my expenses for, what services necessitated the expenses, but I have an expense account at practically any time I leave the office during the month. He approves it. He approves my expense account, anything that I turn in. I turned in my expenses incurred as properly chargeable to the company, in connection with making trips and activities in getting these signatures, put them all in one expense account. I did not separate them but I was not trying to conceal or cover those up. I thought I had a right to charge those. As far as I know, my superintendent understood what I was
722 doing. With reference to the vouchers themselves showing that it is for expenses incurred by me individually while engaged in the ordinary duties as Chief Clerk to the Superintendent as shown by the itemized statements, that is almost a rubber stamp method of making any vouchers, really. That is about the only way they issue any voucher in favor of any man. In those vouchers there were expenses incurred in part in connection with my activities.

Stipulation:

In the case of Mr. McDaniel one voucher for $1.55 covers in part expense in the same way that Mr. Ehlinger's. The other two items are entirely separate and distinct, representing trips that he made to a claim conference and one for something else, but there is a part of that $1.50 item.

Mr. Tallichet:

We will stipulate or offer to stipulate that in the case of Mr. D. D. Wade, two vouchers, one for $1.50 expenses for the month of May, the voucher dated June, the other for $2.00 applied to expense for the month of June, vouchered in July, were solely company business as such, but that the voucher for $7.29 in August is in part for getting members for the Association.

The Court:

I think you said the answer admits that as far as their time was concerned, whatever time was put in was not deducted from their pay.

Mr. Tallichet:

Yes, that is shown in the evidence.

Mr. Crooker:

It may necessitate calling some witness. The stipulation is not entirely satisfactory but we will cross that when we get to it.

723 On further Direct Examination, the Witness testified:

I attended a conference here at Houston with the management of the company somewhere in the neighborhood of August 6th and submitted to the company my claim of my organization to represent the clerical employees. The authorization which my organization tendered Mr. Torian on behalf of the Railroad Company included those authorizations which I had gotten in the manner indicated. In addition to the personal visitation to those 15 or more stations I mentioned, I wrote or

communicated with some of the smaller stations where I did not go personally. I used whatever influence I could in every reasonable manner that I could to get authorizations which I was able to get in that way, I and my organization turned in to the Railroad Company, indicating that we had the authority to represent these clerical employees. Those that I did not personally procure, I got through the representatives of other divisions whom I had communicated with at the time this started. Those who attended this conference with Mr. Torian in which I submitted these authorizations were Mr. A. G. Baker and Mr. D. D. Wade. We were the three. The conference was in Mr. Torian's office. I don't recall what time we got there on the occasion in question; It was on August 5th, I believe, I am not sure whether it was morning or afternoon, but I believe it was in the morning. I knew nothing whatever about the authorizations which Mr. O'Donnell had, and did not get any of them from him. I turned in personally all that had been turned in to me. I could not say how many I got personally from my division, but possibly about 130. I brought them all there, they
724 had been sent to me at Ennis by the representatives from the different divisions. I then put what I had received from the other places in with mine, what I had gotten from my division, and brought them all together. In other words, we did not come in until we felt that we had a majority with which to be recognized. I had conferences with different men on my division, the Dallas Division, up there at Ennis, from time to time.

Probably I can make it clear to you by saying when I first started this that I called in two or three clerks whom I knew were favorable to the Association and

asked them, if possible, and if they could arrange it with their agents, to come in and talk over a proposition with me, and at the time they came in they did not know what it was until after I discussed it with them. I did not from time to time after that call other conferences of men over my division. If I wired a man somewhere to come to Ennis for the purpose of a conference, some clerk, that was probably the conference I just referred to which was probably in the latter part of May, 1927. I believe that I wired G. D. Wood of Mexia and W. B. Wood of Ennis. I don't recall the exact number of men I had. I don't even remember now how I communicated with them, whether by company wire or not. The Railroad Company has a telegraph and a telephone system for sending company messages. Usually telephone. I don't recall whether I sent those men or one of them a wire over Mr. Torian's name to come into Ennis. I don't say that I did not. I might make that clear by saying this, that I don't send any telegrams
725 over my own signature. If it was sent, it was to the agent asking if he could permit that man to see me. Every telegram sent over the line by myself is always signed by Mr. Hollimon. I never sign anything. I do send telegrams with Mr. Hollimon's name signed to them. He is the division superintendent, in charge of the division. I don't recall that in this instance I sent wires to two or three men or to agents under whom they worked asking if those men could come to Ennis at the time specified, over Mr. Hollimon's signature; possibly I did.

I recognize this as the letterhead of the Association of Clerical Employees. That was printed by the Hogan Printing Company out here. It is right there on Rusk and LaBranch. I am almost positive that was printed

there. It is the only place as far as I know that Mr. Wade has arranged for his printing to be done.

This is headed "The Association of Clerical Employees," and signed by me as Chairman. That was done by Miss DeWolfe who is located in the First National Bank, right up on Main Street here. It is a private multigraphing shop. The Association of Clerical Employees paid for this stuff in each instance, in full. Here is a different letterhead which was gotten out at the same place. That is not a letterhead. It is multigraph work. The heading is multigraphed. Miss DeWolfe did that too.

This printing was done by Hogan. That mimeographing was not done by Miss DeWolfe. As a matter of fact,
726 that was the memorandum agreement, you see. I asume that was made out by the railroad company. It was probably sent out by the General Offices.

I believe that the last half of August of last year was the time that we were working with Mr. Torian and his assistants on the wage adjustment to the clerks. If I recall correctly, that was the time in which we spent probably ten days or two weeks here working up that information. I didn't do much on my regular job up at Ennis during that time. As shown by my expense account from August 18th to the 30th, inclusive, is probably correct. I drew full salary during that time just like the other instances where I had drawn a day or two.

Upon Examination by the Court, he testified:

When I was here representing the Clerks, I mean that my salary and expense, my salary is not subject to deduction. I don't recall in that case whether I charged

the expenses to the Association or the Company paid those. I believe the Association paid them at that time. As I recall it, after the first of August, you understand there is a difference between authorizations and memberships. The memberships were paying members, and when we started in with our paying membership we no longer called upon the Company for all of our expenses. That was sufficient then to take care of most of the expense. I mean that until I got some paying memberships, the Company paid all the expenses.

The expense accounts just referred to were the ones I referred to as having received, those expenses. And that is all the expenses that I did incur, in those
727 expense accounts. I had absolutely no printing. The Association paid for all printing and material. I don't think that the company paid the amount of my expenses incurred when I was here in conference with Mr. Torian. I believe the Association had sufficient funds at that time to take care of that. I had no understanding with anybody in the company with reference to the payment of my expenses, or why the company paid them. With reference to whether I had an arrangement with the company to account for the absence from my duties so much in trying to get this thing up; it was understood by the superintendent and, of course, I was about the only one, being one of the general officers of the Association who felt it possible to get away and work on this wage adjustment. I did not have any understanding with anybody in authority in the company that I was to do that; whenever I leave the office it is understood that my work will be taken care of by the force there. Of course they understood what I was doing but I had no understanding. I mean that I had no understanding that I had a leave of

absence. It is not usually necessary to have an understanding with somebody, in a position like mine, with reference to getting off from the work and leaving the company business. I merely leave the Superintendent a note or word that I will be out of the office a day, or a day or so, in connection with other work, and by that he understands that my work will be taken care of by the others. If I were to take a vacation and stay off whenever I wanted to, day after day, that would not be acceptable to the company.

728 I do not have the liberty to go whenever I want to but they understood we were working on the Association work. Somebody in the Company must have understood that I was trying to get up an association of company employees, or what the other side call the company union. I understood that the Company was favorable to that. I am sure they wanted me to do it or I would not have been doing it. I understood that that not only would be permissible, but that it was looked upon with favor, they would like to have me do it. I did it with the understanding that the Company would be glad to help me in any way to get it organized or if need be to help me to give me all the time I wanted to organize.

On further Direct Examination, he testified:

My pay had been $260.00 each month for May, June and July, and was the same for the first half of August, but the second half of August I got a $5 raise, about $9.74 a month. From that time on then, I got $270.00. And I got all my money all the time as shown by the extract from the payroll. These two expense accounts for August and the detailed statement that I made and sent

to the Company showed that I was in Houston the 5th, 6th, 7th, 8th and 9th on one trip and then the 14th and 15th on the next trip. I got paid for all my expenses, hotel fare, meals, everything. Then, in the other half of August from the 18th to the 30th, inclusive, I was here also. I got all my expenses for that time paid by the Company, including hotels, meals and everything I put in an expense account for. During all this time I was here off of my regular division. There
729 were no duties of that division to be performed by me in Houston, at that time the division ending out here at Eureka. I was not here on the Association of Clerical Employees activities at that time. That was when we were working up the adjustment of that wage increase.

Upon Examination by the Court, he testified:

I was here representing the Clerks through the association. And the Company paid my expenses while here.

Upon further Direct Examination, he testified:

That trip I made here to submit my ballots was on August 5th and 6th from the 5th to the 9th. I suppose that the wage scale was on the 14th and 15th. The company did pay me all of that time.

On Cross-Examination, he testified:

I have been in the service of the Southern Pacific Lines for the past fifteen years in various capacities. My principal services have been directly in the superintendents' offices, which has more or less placed me in

close contact with the work of operating a division. I originated the thought of an organization on the Southern Pacific Lines of the Clerks' association. That was in March, 1923, that the idea came to me. I communicated my thought or plan to the clerks in the division office; all of them. There were 10 or 12 divisions. I received 100% favorable responses to those inquires which I made. They all responded favorably. I did not as a result of that have any conferences with those clerks at that time. I passed my petition on to the Chief Clerk of all divisions and also passed a petition received
730 in the Dallas Division office to the Superintendent. The Superintendent answered that communication after having handled it with the proper authorities in Houston, the Superintendent saying that it would be impossible for the management to recognize the division office clerks, due to some ruling of the Labor Board, separate from the clerks at stations and other points. I left it, this information was such that I did not feel like going ahead and acting on it, and I wrote the gentleman who was my predecessor at Ennis for information as to the form in which that should be, that authorization should be made, and secured it and immediately formed the organization of all clerks on the divisions, and following that held a meeting in Houston at which all representatives of the divisions were present, and Mr. McDaniel was appointed general chairman at that time.

At the time he thought of organizing such an association came into my mind, I hadn't had any suggestion from any representatives of the Railroad Company to do anything of that kind. I had no suggestion from any representatives of the Railroad Company with reference to the furtherance of those plans which I have described.

It was in March, 1923 that my plan which was put up to the management about the organization of this Clerks' association of clerks in the superintendents' office was turned down. From that time on I proceeded with the widening of the scope of the association that I was interested in organizing, all I could. I did that on my own initiative. I proceeded to complete the organization.

731 Mr. McDaniel was elected to head the organization. That is the man here in Houston. That Association at that time procured authorizations from clerical employees of the class of employees of which the Brotherhood membership was a class, to the extent of approximately 65% I believe. I don't recall how many employees there were of that class at that time. It would be more or less of a guess if I gave an approximation but I imagine it was about, the best of my recollection and belief is, 1600. I got about 65% of them. In addition to selecting Mr. McDaniel as representative of the Association at our meeting here, we selected a local representative on each division and set up a complete organization on each division. Mr. McDaniel handled all of the conferences with the Management at that time. I don't recall having been personally present at any time in any conference with the management. I believe I was. That Association continued to function probably a year. It continued to operate up to the time that the secret ballot was spread. My recollection is that the result of that ballot was that about 611 voted for the Brotherhood and about 462 for the Association. The balance did not vote. I would say off-hand there were probably a few more than 500 who did not vote. It is true that as a result of that secret ballot the Railroad Labor Board recognized the Brotherhood as representing the clerical employees. I do not

remember when that ballot was taken. I believe it was the first part of 1924. I am not positive, though. I did not ask every man that did not vote why he did not vote. The Association of Clerical employees did not keep up the organization after the time this
732 secret ballot was spread. We let it die down more or less until about May of last year. After the urgent requests of a number of clerks on the Line and knowing the success of the Association on the Union Pacific, and knowing that the Santa Fe clerks were also forming an association, we thought it a proper time to start one of our own again. We had never been satisfied with the Labor Board ruling on the case and we wanted to see if we couldn't form the Association, knowing, feeling that we could get better working conditions and wages from the management by that form of action.

As soon as authorizations were secured for the purpose of securing recognition first, after we got a majority and were recognized we discontinued securing the authorizations. In other words, as soon as we felt that we had a majority and turned them in and were recognized, we made no effort to secure additional authorizations although after August 5th, we did turn in probably one hundred more that were on the way at the time we were being checked in.

Our first effort at obtaining authorizations was to secure an adequate number of clerical employees authorizing us to act for them so as to exhibit to the management the ground for recognition. Then, having gotten that, the drive for the membership started.

(By Mr. Carter):

Q. Now how many authorizations did the Association have, how many persons in the employee class of clerical employees did you have at the time you entered into your conference with Mr. Torian here in August?

733 Crooker:

Now that might get onto a rather vital end of the case and I do object to his statement because the authorizations themselves would be the best evidence.

The Court:

Whatever it is. That report is here on file. It looks like that could be offered. Are you just asking him as preliminary to something else?

Mr. Carter:

No, that is the ultimate fact I want to get in the record, the number of people he represented.

The Court:

That is shown by the report of Mr. Torian, by the check of the Clerk and all that. That has all been threshed out.

Mr. Crooker:

May we not agree on this at this point that the report of the Clerk, together with certain affidavits and an analysis of it by Mr. Torian and by Mr. Nicholson as well as certain cross questions by us and some affidavits which we introduced on it may be all considered in the record as bearing on, in this record, everything we did on the other examination, the other hearing?

The Court:

It seems so to me, it will take a lot of time if we have to go over it again.

Mr. Crooker:

Both sides had a full hearing and put on anything they wanted to. With the further understanding that if either side wanted to introduce anything additional, that they be permitted to do it.

Mr. Carter:

As I understand, here is a notation here
734 "Counted by J. L. Sexton, Chief Deputy Clerk, United States Court, 937." As I understand it there were deductions made bringing the total down to 931.

Mr. Crooker:

Do we now understand that there is introduced in evidence now in this hearing Mr. Sexton's report, together with the affidavits and testimony of Mr. Torian and Mr. Nicholson, and the affidavits which we introduced, in short the testimony which it took us a day and a half or two days, both sides, to go into very fully about those authorizations, together with the authorizations themselves, if you want them in?

Mr. Carter:

As I understand, your Honor, we are offering the report of Mr. Sexton?

The Court:

And that is all?

Mr. Crooker:

I will object to any report by Mr. Sexton, your Honor, because it is not the best evidence and it is nothing except a count by a clerk without any authority from your Honor, or otherwise, to make any recognition or do anything except count some names.

The Court:

That is all it is. He just counted that many names on the petition.

Mr. Crooker:

There isn't anything to authenticate them, to show their execution in any manner, or to give them any verity whatever.

The Court:

I will overrule the objection.

(The report being already in the record, it is omitted here.)

The Witness:

I handled the originals of all the authorizations turned in which the Clerk counted according to this
735 report to be 937. The class of employees and character of persons who signed them were of the class we were to represent. That brings us up to the time of the conference that we had with Mr. Torian here on August 6, 1927, at the time that the Association was recognized.

We discontinued securing the authorizations after about one hundred additional had been turned in and then started in securing members. The one hundred additional were the ones that were counted here by the

Clerk. So far we have been able to secure approximately 900, being members to the Association. I believe at this time that we have something like 893 members. Those are members who pay their dues and are keeping up their membership in the Association. Members are still coming in now. Something like ten or twelve of them yesterday. Ten or twelve memberships came in yesterday.

The distribution of the sum of money that we agreed on as a wage increase August 20th, I think it was, was to practically all of the classes of employees coming under the heading of clerks. In making the distribution of this total sum of money no effort whatever was made to discriminate between those who were members of the Association and those who were members of the Brotherhood. We neither knew which was a member or which was a non-member. The money was distributed on the basis of personal responsibility, on the position or the duties, exacting nature of the duties of the position; in other words, a station cashier or rate clerk who has acquired long years of experience was given
736 more money in the adjustment than was a check clerk or a similar employee. The distribution was made to positions and not to persons;

On Re-Direct Examination, he testified:

I have told Mr. Carter that back in 1923, when this Association of Railway Clerks was contending with the Brotherhood of Railway Clerks, that I got about 65%, our Association did, of authorizations to represent them. I could not say how many in number there of the clerical employees whom both parties admitted came in the class in question; there were about 1600 or 1700. 65%

of them would be as I recall it something like 1200; which we had. You understand, I am speaking now only from the information I got from the other gentleman, but I was not their directing head at that time. Mr. McDaniel handled that part of it. I took part in it. What I was speaking of were the authorizations that were presented at that time. I say there were 1100 or 1200 of them out of a total of 1600 or 1700. The secret ballot that I have testified about was submitted to this same class of employees, 1600 or 1700 names, and we got 462, the figures shown there. I think that is correct.

The Court:
I think that is argument.

These authorizations that I got in 1927 began in May and extended up to some time in August. Then I began to solicit memberships. I said I was getting authorizations only up until about the 16th. We lined up the start getting memberships as distinguished from mere authorizations about the 1st of August. With reference to whether I have already stated that I waited
737 until after recognition before we began to get paid memberships: I was speaking then of having forms printed and such as that. We did not get any memberships prior to the so-called recognition. This so-called recognition happened about August 5th or 6th, 1927. Up to that time we had no paid memberships. We had only authorizations. The authorizations had been gotten by personal solicitation and by sending through the mail and that sort of thing, such as I have described, on my division. There had certainly been a good deal of printing and mimeographing done and the clerical employees were addressed some character of communica-

tion prior to August 6th. As I recall it wasn't anything in the form of a general distribution to all clerks. We were trying to make a personal canvass of them and of course if the circular was put out we would try to send them to one man at a station. I will say I don't think there was correspondence went out at that time. It did not go out in Railroad Company envelopes. We did not send communications to clerical employees on our division in R. R. B. envelopes. We never did in any instance, on Association business. We sent those telegrams over the company wire. I testified that up to August 6th, we had some 900 authorizations which it had taken us from somewhere in May or early in June to get. We did not have any paid memberships or any money in the treasury of our organization. Had no bank account, had no funds. And we hadn't had for three or four years.

With reference to who printed or mimeographed all the authorizations that were signed by those 900 men,
738 some printed forms and some mimeographed forms, I would say that for the Dallas Division I believe something like 10 or 15 sheets I made up myself.

On Examination by the Court, he testified:

I spent quite a bit of my own personal funds outside of what the Company paid, in getting up the Association; over and above the expenses that I thought were properly, what you might term, a normal expense. With reference to whether I subdivided the expense of getting up the Association into normal and abnormal, that's going a little bit out of line, but I might say that I am married and have no family except my wife, and when I leave

home she usually accompanies me. That adds probably five or ten dollars a day sometimes. I mean that I treated that just like I would any other company business and did not charge into it matters—I paid that out of my own personal funds. We have 800 or 900 paid up memberships. The dues are 50 cents a month to the Association. There is no initiation. They pay so much a month and as long as you pay you are in good standing, I assume just like the Brotherhood. That is the system of the B. R. C. and all these other organizations. We have an Association of that general character. I said that we had 900 paid up memberships which are just about one-half, practically. I have no idea whatever what membership the B. R. C. has except that I think it is considerably less than that. I am only forming an opinion, however, from our discussions on the line. I have talked with the clerks on the line and they know of this discussion about who will represent them. They realize that there are the bone over which these
739 two contending people are fighting. I have discussed the question with them. With reference to the method used in getting those memberships I have always endeavored to explain to them what we considered was the beneficial part of the association as compared with the Brotherhood, feeling that we could gain more as an organization than they have been able to get for them. With that contention fully understood on the road, I would hardly say that a man belonging to one or the other doesn't care about it, but I will say that there are probably some men who don't belong to either. From my investigation and from talking with these men I think they are remaining with the Association or the Brotherhood depending on what they earnestly believe will be the best for them. I hardly think that

because the two of them are fighting, that some are following one group and some the other just to be following one group. Some, probably a few with rather narrow outlook on things of that kind might be doing it, but I hardly think so. I think that most of the clerks following one or the other are doing so because they think it is for their best interests. I do not think that a fair ballot could be obtained of the clerks as to which of these organizations they believe should represent them; for the simple reason that the Association is a radical departure from the old union idea and a large number of the crafts are under the union control at this time and have their different organizations and exercise influence and coercion over the clerks involved to the extent that they would have them work against the Association instead of with it, even though they might be favorable to it. It has prevented a large number of them from joining us. We got nearly 900 who did join us. The reason with that condition existing it has not prevented them from paying membership, is because the members that we received are those that just felt they were coming in anyway. I do not mean that those we received would fall away from us in case—I wouldn't say that, but some of the others who want to come in would be influenced to a large extent. Take in the case of a yard office, we have a number of clerks there who are isolated from all the other clerks on the division. They are working in direct contact with the switchmen, trainmen and engine men and would be influenced to remain with the union side. I mean that other organizations have exerted quite a bit of influence in that respect. We get our memberships mostly from places where they don't have this intimate contact with the other Brotherhoods; that's it. With

reference to whether I think that inside of this cl..ss' organization there are really two separate classes and that one side really does not represent the other and that it probably should have two representations instead of one, or that the lot I represent just naturally go that way and the lot that the Brotherhood claims to represent would naturally stick there and that either one or the other would cross over: I will have to answer in this way. As an Association we are not making any fight on the Brotherhood as a union. We are endeavoring to get all of the clerks into an Association which is not a so-called union. It is just an association of
741 clerks localized on the Southern Pacific, but there are a large number of men, clerical employees, who have had it instilled into them that there is nothing in the world but a union can do anything for them. Of course we could never hope to turn them. There is also a large number who are more or less neutral and we believe that we could persuade them our way. We would have no objection if the Brotherhood of Railway Clerks would use their persuasion and the Association would use theirs, but in addition the Bortherhood would have the persuasion of the other railroad brotherhoods, the enginemen, the trainmen, the yardmen and the other classes, who are not directly connected with the controversy.

I feel that while it may be that on our side the railroad is working for us, as the Brotherhood says, that on their side the other unions are working for them. That's our hardest trouble. I feel that if they did what they wished, as a matter of fact we would not really get them in our organization. I think that the majority of the clerks, if they expressed their wish about it, would probably want the Association, but whether they would have

the nerve to really be for it or not in the face of some of the union operators being directly over them, knowing he didn't vote for the Brotherhood, it would not be long before he could give him a lot of trouble. He could give him more trouble than the Company could. Well, I wouldn't say what I had in mind because it would not be in connection with the Court. With reference to why with all of this controversy if the clerks were the ones to say who they wanted, why they
742 can't say it: Well, if they will just give us enough time they will all say it because we are getting them all lined up as members. I feel that the membership, the man paying out his money for a membership, is sufficient to show who is actually representing the clerks. With reference to whether it would be easy with that many members, to just submit to the clerks which organization they wanted to represent them and if they wanted us they would vote for us: I am going to say what I hesitated about saying a while ago, and that is that I am personally convinced that at some point a station clerk who is favorable to the Association would not vote for the Association in the face of his superior who is a telegraph operator agent, a combination man, and I believe that he would stay out, refuse to vote for the Association, for that reason, though he believed in it. We have not necessarily got more authority than they have got, even with the strength of our representation of the management. The management has not assisted us in any way except in the way that has come out here, and in the way of a little personal expense, and such as that.

On Re-Cross Examination, he testified:

There is a union of railway telegraphers such as I have described, with a national organization similar to the clerks. Those railway telegraphers are the type of men or class of men that ordinarily are station agents where there are just a few men employed at all stations except the larger supervisory stations such as Houston and Dallas. At such points the railway telegraphers brotherhood man would be the head man at that
743 point. He would be in control or exert an influence over the clerks under him at that station. I just use that for illustrative methods that might be employed.

On Re-Direct Examination, he testified:

I did not use the name of some place as an example of a station where we couldn't hope, our Association couldn't hope to get many votes in case of a ballot being taken. Without naming the place, I was talking about some small place that has got a railroad telegraph operator as a joint operator and agent. The agent of the railroad company who is in charge of whatever clerical force there is there, which is usually small, anywhere from probably 1 to 15, would be a union telegrapher. I do not think that our memberships would come largely from larger stations that would be presided over by men who did not belong to some other union. We feel that a great many of these points, there would be entirely too much interference by the agents—operators over the clerks. That, however, it is not true of all stations. That is one of the reasons I assigned to the Court as thinking that a secret ballot would not do. I was speaking of the yard offices. The switchmen, the trainmen and the enginemen come into contact with the clerks at those

points. I do not think that the same motive or the same reason would operate as strongly against authorizations and memberships in our organization as a secret ballot taken, for instance, under the Court's direction. There are about 1750 or 1700 clerical employees, in round numbers, involved in this litigation. There was something in the neighborhood of 100 or 110 of
744 what we call personal office force. They were excluded from the ballot before. I would say that not the most of those men belong to our organization, but the majority of them do. Mr. Sanders and Mr. Armstrong are not union telegraphers.

G. B. GOODLOE called as a witness for plaintiff, and having been duly sworn, testified as follows:

I am superintendent of the defendant railroad company at Victoria of what is known as the Victoria Division. The division starts at Rosenburg and goes to Brownsville, over to McAllen, Corpus Christi, Rockport, Port Lavaca, Palacios. I believe that covers it. And into San Antonio. We stop just this side of San Antonio. I have occupied the position which I now occupy as superintendent of the Victoria division since May 1, 1925, up to and including the present time; I took charge of the division on the 14th of May, 1925. I am here under subpoena issued by this Court and commanded to bring with me certain letters and communications and so on that are described in the subpoena served on me. I have done that. These are the letters and communications which I have brought in in response to the subpoena.

John T. Scheumack is my chief clerk. He is here in the Court room now. I think after along in June,

1927, he was active in the formation or fostering of getting authorizations from the clerical employees on that division or some of them, at least. I knew in a general way what he was doing. It had my approval.

I approved his expense voucher for such time
745 as he might have been out on the road doing that, along with some other duties. He turned in an expense account in the usual way and I did not question what part of it, if any, was connected with the organization of the Association, or what was the usual run of business. I approved his expense account as turned in. I assume that it did include some of those expense accounts which I approved did include, time and activities spent in behalf of the clerical organization in getting these authorizations. I don't recall that he phoned me on one occasion about some of his efforts to get some of these authorizations. He might have. I don't recall that he phoned to me long distance and had some conversation with me about what he was doing, or reporting to me in connection with it. He might have. In the early part of the proceedings we talked about the thing from time to time but I don't remember any phone conversation. Those activities had my approval. That approval was given to those activities because I thought and believed they were to the interest of the company of which I was an official. I still think so. I discussed this matter some with Mr. Torian, from time to time. He was in touch with what was going on. I knew and understood that it had his approval and encouragement in a general way. He is my superior officer. He is a general officer over other superintendents over the entire system. I don't know that Mr. Torian ever said anything by way of encouragement about it, but I knew that it met with his sanction. There were no

general conferences between Mr. Torian and other superintendents other than myself in which this
746 matter was discussed. Usually when the matter came up between us I was in Mr. Torian's office discussing other business that might come up in the ordinary course of events, and this was rather conversational than any other way.

J. T. SCHEUMACK, called as a witness for complainants, and having been duly sworn, testified as follows:

I am J. T. Scheumack. I have none of the papers which were designated in the subpoena served on me. I did not bring any others, other than some personal correspondence between myself and some members of the Association, concerning the Association of Clerical employees. This is all of the papers and correspondence that I had in my possession with respect to the activities of the Association of Clerical Employees. This file which I have handed Mr. Tallichet includes all I have. It includes carbon copies of all letters which I may have written. It is a complete file of all the correspondence which I have gotten. I was quite active during quite a few months in connection with this matter. I am chief clerk to the Superintendent of the Victoria Division. I occupy the same position on the Victoria Division that Ehlinger does on the Dallas Division and the Ennis Division, and the same position that Mr. Derrington does on the Houston Terminals. I covered the major portion of my division in my efforts to influence as many employees as possible to sign these authorizations. All of the authorizations which I was able to get from those clerical em-

ployees were turned in to Ehlinger or somebody
747 for presentation to the Company in August of last year. So far as I know those are the authorizations on the Victoria Division that are included in these that have been testified about, I assume they are. I did not call Mr. Goodloe over long distance somewhere out from Victoria with reference to my activities. I don't recall having any conversation with him over the phone with reference to the activities of the Association from somewhere down in the Valley. I don't recall any phone conversation. I may have asked permission to be off or to be absent in connection with this matter. The railroad company paid me straight salary while I was doing this work; made no deduction. They included in my expense account whatever I expended while I was out of the city in connection with my regular expense accounts during the month of June only. There were some then. I did not write to clerical employees with reference to this matter; I called on them personally. I don't recall having written anyone in connection with it.

Upon Examination by the Court, he testified:

I got interested in the matter and started organizing because I got a long letter from Mr. Ehlinger advising that he was organizing the organization and revising it. I was interested in the Association at the previous period when it was up in 1923 or 4.

H. J. MIKSCH, called as a witness for complainant, and having been duly sworn testified as follows:

I am superintendent of one of the divisions on the Southern Pacific Lines and have been for a number of years. I have produced in obedience to the
748 subpoena served on me certain memoranda, correspondence and so on. This reflects all of my files on the matter. My chief clerk is D. R. Nystron. I am not positive whether he was active in the Association of Clerical Employees. I think he took some action, I am not sure.

Complainants at this time introduced into evidence the same written authorizations to the Brotherhood of Railway Clerks that were in evidence in the former hearing and are hereinbefore sufficiently set forth and fully described.

749 Stipulation: It was agreed that letters, telegrams and so forth from the files which were produced in response to subpoenas issued, could be introduced in evidence same as though the witness' name was signed to the letter, had testified that he wrote it, signed it and dispatched it, and the party to whom it is addressed had testified that he had received it in due course.

Complainants next introduced in evidence the following letters:

(To which defendants objected on the ground that they were wholly immaterial to any issue in the case.)

750 EXHIBIT C-13.

Victoria, Texas, July 13th, 1927.

Mr. Frank C. Ehlinger,
Gen. Chairman Clerks Association,
Ennis, Texas.

Dear Sir:

With further reference to the Clerks Organization, and the collection of dues, it occurred to me that the Local Secretaries will probably experience some difficulty in collecting dues from the members promptly, and as a result their remittances to the General Secretary-Treasurer will be delayed.

I understand that the General Office collects the dues of their organizations by having the dues deducted and taken care of on the payroll, and I was just wondering if we could get the management to let us put into effect a similar arrangement on the Divisions, that is, we could handle this similar to other deductions that are made, such as Insurance, Watch Deductions, etc. We could prepare a form and when a member was secured, have him sign form authorizing the Company to deduct the amount of the dues from his second period pay roll each month, and the Treasurer would issue voucher each month in favor of the Local Secretary-Treasurer to cover the amount of dues collected. This would insure the dues being collected promptly each month, and would put it in the hands of Secretary-Treasurer not later than the 17th, of each month.

751 Exhibit C-13 (continued).

This would relieve the Secretary-Treasurer of lots of worry and work, and at the same time, I believe would meet with the approval of the clerks as a whole. If the

amount of fifty cents is agreed on, and is deducted each month from our pay checks, we would not miss it, and it would save each individual clerk the trouble of seeing that his dues are sent in each period and if the different organizations would arrange to select some member as Secretary-Treasurer who is located either in the Division Headquarters or at least in the same town, it would afford him access to the pay rolls to make a check of those paying dues when it is necessary to do so.

If each clerk on being brought into the organization is requested to sign the form authorizing the Company to deduct dues from their pay checks, the Local Secretary-Treasurer would be furnished with a copy of such order and could use this in checking the amounts received each month against the total membership. I believe if we could make such arrangements we would find it to our interest to do so, and would suggest that the first opportunity you see what the management's views are in the matter.

Yours truly,

(Signed) J. T. SCHEUMACK,

1-CC:

Mr. A. W. Baker, Vice Gen. Chairman, Clerks Assn. Houston, Texas.

Mr. D. D. Waid, Secretary-Treasurer-Clerks Assn. Houston, Texas.

Mr. L. T. Roemer, Victoria, Texas.

752 EXHIBIT C-14.

Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, July 17th, 1927.

Mr. J. T. Scheumack,
Victoria, Texas.

Dear Sir:

I am in receipt of your letter of July 13th, in which you suggested that the dues for membership in the Association be deducted and taken care of on the payroll. In my opinion this is a very good suggestion, and since your letter has been received I have taken the matter up with Mr. Ehlinger at Ennis and today I received advice from him and he concurs in the matter; however, this will have to be taken up with the management which we will do the latter part of the coming week and I only hope we are successful in getting this over.

I have been requested by Mr. Ellinger to continue the solicitation of signatures to the petition and no doubt you have received the same request by the time you receive this letter. I would like to add to Mr. Ehlinger's request that you continue to put forth every effort possible on your division to solicit as many names as possible in order that we may have a possible two-thirds majority on these lines.

For your information, Mr. Ehlinger has requested a conference with Mr. Torian one day during the coming week and I am sure the chairman will advise you the exact date.

Trusting that you will keep the boys lined up
753 with the Association, I am,

Yours truly,

(Signed) D. D. WADE,

DDW. Genl. Sect. & Treas.

Stipulation: It is agreed that the Texas and New Orleans Railroad Company furnishes group insurance to its employees and make deductions from its payroll. And that they require of certain employees the examination of watches periodically and make deductions.

(To which defendants objected on the ground that it is immaterial, which objection was overruled by the Court and to which defendants excepted.)

Complainants next introduced in evidence the following portion of the following letter, to which defendant objected on the ground that it was a communication passing between officers, confidential in its nature and immaterial to any issue in this case. The objection was overruled by the Court, to which defendants excepted, and further objected and moved to strike out the portion referring to the Kansas City Southern as wholly immaterial in the case. Which latter objection was overruled by the Court upon the ground that it was material in connection with the letter of Mr. Lull when he used that illustration and his construction of what they had done; to which ruling defendants excepted.

754 EXHIBIT C-15.

Houston, Texas, May 24, 1927.

Mr. A. D. McDonald,
President,
New York, N. Y.

Dear Mr. McDonald:

Order of Railroad Telegraphers * * *

In the case of clerical and station service employees, the General Committee of the National Organization of the Brotherhood of Railway Clerks filed, on November

2, 1925, a request for increase of 10c per hour. The granting of this request would have involved an increase payroll expense of approximately $775,000.00 or about 20% for the classes of employees involved. Conferences were held with the committee, but no agreement could be reached, as we did not feel that there was any proper basis for the increases asked for. In January, 1926, the organization filed the case with the United States Railroad Labor Board and it was pending before the Labor Board at the time the Board was abolished by the Railway Labor Act. Following the abolition of the Labor Board further conferences were held with the organization committee but no agreement could be reached and the organization has invoked the service of the United States Board of Mediation. In the recent arbitration case on the lines west of El Paso the arbitrators awarded large increases, the majority of the clerical employees being awarded an increase of 5c per hour. As our average rates for clerks are considerably lower than those on the Pacific Lines we could not except any more favorable decision in case this matter went to arbitration and to apply on the lines east of El
755 Paso the award rendered in the Pacific Lines case would mean an increased payroll cost of approximately $340,000.00 per annum.

From the best information we are able to obtain the majority of our clerical and station service employees do not belong to the National organization and it is our intention, when handling the matter in mediation proceedings, to raise the question of the right of this organization to represent these employees and if arbitration is proposed we shall decline to arbitrate on the basis that the petitioner does not represent the majority of the employees. This will permit us to get

away from the interference of this organization and if successful in this, I am satisfied we can make settlement with our own employees at a cost not to exceed $75,000.00 per annum.

One of our neighboring roads, the Kansas City Southern, recently had a similar situation and declined to go into arbitration with an organization that did not represent a majority of its employees. The question of going into arbitration on any and all requests that are presented by miscellaneous classes of employees has been discussed with the managers of a number of railroads in the Southwest and it is the consensus of opinion that the lines should decline to arbitrate these matters, as there is no legal obligation to do so and that these requests will continue to be presented in even greater numbers until the lines take a firm stand against arbitrating matters that should be settled in direct negotiation between the individual railroads and its employees.

(Original signed):
H. M. LULL.

756 Complainants next introduced in evidence the following memorandum:

EXHIBIT C-16.

H. M. L., Sep. 7, 1927.
Houston, Texas, September 7, 1927.

Personal.
Mr. G. S. Waid:

Mr. Harper of the Clerks' organization requested permission to see me and it was granted. He called yesterday accompanied by four committeemen and made a

verbal statement of his position, to the effect that his organization had been trying to deal with the company for several years and that they had been recognized on one or two occasions but that recently they had been unable to obtain opportunity to confer with representatives of the railroad company. He took the position that they had an agreement with the company which the company has violated in dealing with the new organization and expressed views generally with which you are, no doubt, familiar. Without entering into an argument with him, I listened to what he had to say and told him that we considered the new organization properly represented employees of this class and that, therefore, made an agreement with them and that under the circumstances there seemed to be nothing further for us to do in the matter.

Mr. Harper requested transportation to Washington, the trip being, I gathered, for the purpose of making representations to the Mediation Board and I told him that in the present status of the matter it would be inconsistent for us to furnish the transportation as there was no basis on which it could be done.

737

As he had come over here from San Antonio as result of an appointment I gave him pass back to San Antonio for account company employee.

Mr. Harper did not indicate what course he proposes to pursue from now on.

H. M. LULL.

Complainant also introduced in evidence the following telegram, to which defendant objected on the ground of immateriality, which objection was overruled by the Court, to which defendant excepted.

EXHIBIT C-17.

Telegram.

New York, September 9, 1927, 4:17 P. M.

H. M. Lull, Houston:

A-15 and previous wires Harper Fitzgerald and two others have just called on me asking that I instruct you to give them hearing. After listening to their statements, I advised them that entire matter was in your hands and that I would support you in any position you take. Among other things Harper states positively they represent majority of employees, that they have so advised the Mediator and that he, the Mediator, has been dealing with them on that basis. This is directly contrary to information given you by the Mediator, as stated in your letter of July thirtieth. Apparently, therefore, Mediator has misled you and your
758 position in the matter is based on this misinformation. In addition to telling Harper that I would not interfere in the case I told him that based on information received from the Mediator we understand his organization does not represent majority of employees and that if he did represent majority it was up to him to show or prove his case. (End Sheet one.)

Sheet Two:

Harper and his associates are going to Washington to call on Chairman Winslow and Neff about the matter, and I take it that you may, therefore, expect to hear something further from Neff. In course of the conversation Harper stated his organization represented practically all the employees at certain large stations

He said that at Houston Freight Station 114 of the 117 employees were members of his organization. If this statement is correct and if his organization includes membership from other stations on same basis as at Houston, it would indicate that he has very strong organization and that matter is, therefore, quite serious and should be dealt with accordingly. As a matter of general information keep me advised as to developments. M-372.

A. D. McDONALD.

Complainants next introduced in evidence the following letter:

EXHIBIT C-18.

Southern Pacific Lines.

A. D. McDonald, President, 165 Broadway,
New York City.

September 30, 1927.

759 H. M. Lull,
Executive Vice-President,
Houston, Texas.

Dear Mr. Lull:

Referring to your letter of September 21st and previous correspondence, with regard to the controversy with the Brotherhood of Railway Clerks, herewith copy of letter dated the 28th instant from the Secretary of the Board of Mediation, together with copies of the enclosures referred to therein, and also copy of my reply of this date, all of which are self-explanatory.

I have no particular instructions to give you as to how this matter should be handled. I am not familiar with all of the working details of these labor matters and will have to leave the handling of the matter to you.

With regard to the statements made in your letter of July 30th, about your conversations with Mr. Neff, you will note from his letter he now takes the position that you misunderstood him. (Stricken out by the Court) * * * Apparently, the Board of Mediation has assumed or retained jurisdiction of the matter, and I should think that the first thing to do would be to definitely establish just what organization does represent a majority of the clerical employees. However, please consider this merely a suggestion, as I desire to leave the entire matter in your hands.

Yours truly,
(Signed) A. D. McDONALD.

Complainants next introduced in evidence the following "Memorandum of Conference":

760 EXHIBIT C-19.

Houston, Texas, July 11, 1927.

Memorandum of Conference:

At 4:40 P. M., a committee consisting of 17 representatives of the clerks on these lines called at this office. This committee was as follows:

El Paso Division—Dave Harper.
Houston Division—H. J. Genard.
Victoria Division—L. T. Roemer.

Victoria Division—J. T. Shumack.
Terminals Division—C. D. Derrington.
Terminals Division—J. C. McDaniels.
Beaumont Division—T. R. Nystrom.
Beaumont Division—W. H. Kilter.
Beaumont Division—D. D. Wade.
Beaumont Division—P. H. Young.
Lafayette Division—P. H. Lalanne.
New Orleans Terms.—J. G. Ferron.
Dallas Division—F. C. Ehlinger.
Austin Division—W. A. Hamlet, Jr.
Houston Gen. Shops—A. G. Baker.
Houston Gen. Stores—W. C. Biddle.
Yoakum Shops and Stores—W. J. Ehrhart.

The committee advised that the clerical employees had organized an Association of Clerical Employees for these lines with the purpose in view of dealing directly with the Management in a spirit of mutual co-operation and settling their affairs through that channel instead of attempting to handle them through outside organization, and that this committee had elected F. C. Ehlinger as its general chairman, A. G. Baker, vice-general chairman, and D. D. Wade, general secretary-treasurer. Speaking for the committee, General Chairman Ehlinger stated that they had drafted and agreed upon the constitution and by-laws and that these would be written up within the next two or three days and the organization put on a working basis and
761 that thereafter, or at as early a date as convenient for Mr. Torian, after his return, that they would be glad to arrange a meeting with him for the purpose of discussing matters of mutual interest. Advised the Committee that I was very glad that they

had called and that they evidently had selected a first class and very representative committee that would do business with the management on a proper basis and I hoped would in a short while be able to iron out and get rid of all of the little problems that had been confronting us which would enable us to proceed along the lines of hearty co-operation and cordial relationship throughout as had been the case for the past several years with our General Office Employees. Advised him further that I knew that Mr. Torian would very greatly regret that he was not here to meet them at this time but that he would be glad to do so at as early a date as possible following his return.

I inquired as to what they were doing in the matter of getting all of the employees, or as many as possible into their fold and they stated that they would be carried on energetically during the interval between this and Mr. Torian's return to headquarters. The Committee left at 5 P. M. All of them seemed to be in very high spirits and confident that they were going to work out their association to a permanent and successful basis.

762 Stipulation: It is agreed that the following are the positions then held by the Committee referred to in the preceding letter:

Dave Harper, for instance, representing the El Paso Division was Chief Clerk to the Division Engineer at El Paso. H. J. Genard representing the Houston Division, was assistant division accountant on the Houston Division. The Victoria Division was represented by L. T. Roemer, who was time-keeper. The Victoria Division was also represented by J. T. Scheumack, who was on the stand, chief clerk to the superintendent.

The Terminals was also represented by J. C. McDaniel, who was chief yard clerk at Houston. Beaumont was represented by T. R. Nystrom, who appears to be chief clerk to the superintendent at Beaumont. Another man from Beaumont was W. H. Kolter, who was chief clerk to the Division Engineer. Beaumont was also represented by D. D. Wade, who was utility clerk. Beaumont was also represented by P. H. Young, who was assistant time-keeper. Lafayette was represented by P. H. Lalanne, who was statistician. The New Orleans Terminals by J. G. Fernon, who was assistant Division Accountant. The Dallas Division by F. C. Ehlinger, who was on the stand, chief clerk to the superintendent. The Austin Division by W. A. Hamlett, Jr., clerk. Houston general shops by A. G. Baker, shop accountant. Houston general stores by W. C. Biddle, abstract clerk,
763 and the Yoakum shops and stores by W. J. Ehrhart, who was insurance clerk.

Complainants next introduced in evidence the following letters: (Exhibits C-20, C-21, C-22 and C-23.)

764 EXHIBIT C-20.

The Association of Clerical Employees,
Southern Pacific Lines.

Ennis, Texas, July 13, 1927.

Mr. J. G. Torian,
Asst. to Vice-Pres. & Gen. Mgr.,
Southern Pacific Lines,
Houston, Texas.

Dear Sirs:

In connection with recent conversation in connection with matters of mutual interest.

Our Committee is endeavoring to prepare themselves in such a manner that we will be in position to handle the

affairs of the clerical employees in an expeditious way, and in order to do this I consider it essential, both from your standpoint and ours, that we have certain information regarding the responsibilities, qualifications, etc., of this class of employees available when needed.

It is suggested that Clerical employees of every department be placed in groups according to the importance of positions, which would enable us to make a proper distribution of increases. Would consider it could best be handled by securing the information from representative Stations, Yards, Division Accounting Bureaus, etc., by statements from Division Accountants, Chief Yard Clerks, etc., as they are best in position to know the importance of each position. A statement (sample) is attached showing the information considered necessary. I should think this could be secured through superintendents with very little trou-
765 ble, and feel that it would be valuable information to the management and the Association when needed.

Trust you will not consider this request as premature or that I am getting out of place in suggesting this to you, but the classification of positions according to their importance is a pretty serious proposition and I had rather have something to work on from those directly in charge than to attempt to classify them myself. Conditions at present make it inadvisable for our Committee to attempt to secure this information for the System, although I will be able to work it out for the Dallas Division. If your office could secure the information for other Divisions it would undoubtedly be beneficial.

Respectfully,

F. C. EHLINGER,
General Chairman.

Page 3—Exhibit C-20.

Classification of Clerical Employees According to the Relative Responsibilities of Positions.

Group.	Departments.				
	Office. Superintendents	Division Accounting Bureau.	Station Service.	Yard Service.	Etc. Etc.
1	CC. to Supt.	Divn. Acct.	C. C. To Agt. Cashiers.	Ch. Yd. Clk.	
2	Asst. Ch. Clk. Car Distrib.	Asst. Acct.. Hd. Tmkpr. Matl. Acct. Asst. Tmkpr.	Rate Clk. Claim Clk. Whse. Fmn. Tellers	Line Desk Manifest	
3	Transpn. Clk. Supts. Secy. Steno-Clks.	Bill & Vo. Reg. & Abs. R. & E. Acct. Jt. Pac. Acc.	Check Clk. etc..	Checkers	
4	Other Clerks	Comp. Opr. Steno. Others	Messenger.	Others .	

767 EXHIBIT C-21.

Representation of Clerical and Station Service Employees.

Houston, Texas, July 20, 1927.

Personal.
Mr. C. R. Merrill, Supt., El Paso, Texas.
Mr. A. D. Mims, Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksch, Supt., Houston, Texas.
Mr. E. A. O'Donnell, Supt., Houston, Texas.
Mr. R. M. Glover, Supt., Lafayette, La.
Mr. P. B. Torian, Supt., New Orleans, La.
Mr. B. S. Hollimon, Supt., Ennis, Texas.
Mr. J. H. Walsh, Supt., Austin, Texas.
Mr. J. S. Netherwood, Asst. Supt., M. P. & E., Algiers, La.
Mr. L. B. Wood, General Storekeeper, Houston.
Mr. D. H. Lusk, Manaager, Dining Car Dept., Houston.
Mr. J. T. Connor, Supt., T. & N. O. Shops, Houston.

Gentlemen:

As you know the organization of the Brotherhood of Railway and Steamship Clerks has never held authority to represent the majority of our clerical employees and this representation has never been satisfactory to the majority of those employees. The Clerical employees recently started a movement to affirmatively show that the organization of the Brotherhood of Railway and Steamship Clerks does not represent them and so far 965 out of a total of 1855 have signed petitions requesting that the management deal directly with them through an employees' committee, and these petitions

annul and cancel all authority formerly given the organization of the Brotherhood of Railway and Steamship Clerks.

After securing the signature of the majority of the clerical employees, the committee in charge of the work called upon each division for a representative and these representatives met at Houston on July 11th, and formed
an association of clerical employees, elected a
768 General Chairman, a vice-General Chairman
and a General Secretary-Treasurer and adopted a constitution and by-laws. I attach for your information copy of letter of July 12th from the General Chairman of the Association and a copy of my reply of July 15th. I will meet with this committee as soon as I can appropriately do so for the purpose of working out an agreement and understanding with them.

Yours truly,
J. G. TORIAN,
Asst. to V. P. & G. M.

769 EXHIBIT C-22.

"The Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana."

Houston, Texas, September 30th, 1927.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

I am pleased to give you below the following pertinent facts concerning our Association at the present time. Locals have been organized at the following places: Beaumont Division, at Houston, consisting of

the Superintendent's Office, Accounting Bureau, Division Engineer's Office and the Dining Car Department, the Houston General Shops, the Houston General Stores, Dallas Division at Ennis, Houston Division at San Antonio, Yoakum General Shops and Stores. The membership in the Association is increasing daily, with the Division membership to date as follows:

Beaumont Division—55 paid up members.
Terminal Division—93 paid up members.
Dining Car Department—50 paid up members.
Houston General Shops—20 paid up members.
Houston General Stores—12 paid up members.
Dallas Division—46 paid up members.
Victoria Division—18 paid up members.
Houston Division—14 paid up members.
El Paso Division—16 paid up members.
Austin Division—11 paid up members.
Lafayette Division—3 paid up members.
Yoakum General Shops and Stores—17 paid up members.

We understand that some of the divisions have quite a number of members which have not yet been reported to our Committee and consequently we have not taken credit for them until such reports are received.

770 Members of the General Committee have visited the following places to date for the purpose of assisting in perfecting the organization at such points: Austin, San Antonio, Victoria, Yoakum, Galveston, Houston General Shops, Houston General Stores, Beaumont Division (Houston offices), Dallas Division (Ennis office) and El Paso.

A local for the Victoria Division is to be formed Sunday, October 2nd, and the General Secretary will be

present to assist in its formation. On Monday, October 3rd, a local is to be organized at Galveston, provided sufficient membership is secured to warrant its formation. This will then leave all points east of Houston to be visited and organizations perfected, also the major stations on the Dallas Division. The Houston and El Paso Divisions other than Division headquarters are to be taken care of by the Division representatives just as soon as the annual inventory has been disposed of.

While passing through San Antonio on our return from El Paso we were informed by our Division representatives that all departments excepting the freight station and possibly the car department had joined the association 100% and that applications together with dues would be forthcoming soon after payday. This is the first point reporting a 100% membership and we consider this particularly gratifying in view of the fact that this is the location of headquarters of the former B. of R. C. representatives. We feel encouraged to the extent that we expect to make satisfactory progress in enrolling a nice membership from the San Antonio Freight Station, which has here-
771 tofore been solid with the opposition.

Englewood yardmen are lining up nicely and the present prospects are that this will be the second location to go over with a 100% membership. We feel reasonably sure this will have a telling effect on the strong opposition now prevalent at Houston Freight Station and thereby result in increasing our membership from that station, which at present is rather limited.

Our financial condition at the present time is rather precarious as we have been put to quite an expense in getting out our printed matter and purchasing other

supplies necessary to carry on our organization. Quite a number of our paid members have only contributed one month's dues.

Our present purpose is to circularize to the employees all available information concerning our organization and thereby hope to bring about a crystallization of sentiment in our behalf. We found our most serious mistake was in depending on the division chairmen to distribute the literature we issued on our recognition and the wage adjustment. This, in our opinion, is the reason why our membership is not greater, and we have found it necessary at all points to acquaint the employees with the information contained in the circular. The General Committee is arranging to circularize regularly and mail direct to employees, instead of depending on division representatives. This will be expensive but more effective.

We hope that within the next few weeks our entire organization will be perfected from El Paso to
772 New Orleans to such an extent that we will be able to bridge any emergency that may arise and you, of course, can depend on us to the last resort.

We will be only too glad to keep you advised as to our progress and assure you that we will leave nothing undone that would tend to lessen the present confidence in us by the management.

Yours very truly,

F. C. EHLINGER,
General Chairman, Association of Clerical Employees.

773 EXHIBIT C-23.

Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, October 26, 1927.

Mr. J. G. Torian,
Assistant to Vice-Pres. & Gen. Mgr.,
Southern Pacific Lines in Tex.-La.,
Houston, Texas.

Dear Sir:

Membership in The Association of Clerical Employees, as of this date stands as follows:

Division.	Paid.	Not Paid.
Beaumont Division	64	4
Houston Terminals	33	76
Dining Car Dept.	5	..
Houston General Shops	35	..
Houston General Stores	23	..
Dallas Division	69	1
Victoria Division	43	0
Houston Division	51	6
El Paso Division	26	0
Austin Division	22	1
Lafayette Division	34	2
New Orleans Terminals	12	0
Algiers General Shops	4	0
Yoakum Shops & Store	17	1
Algiers General Store	34	2
Creosote Works	..	15
	472	108

Total Paid and Unpaid 580

A meeting was held at Houston, October 24th, of Association representatives and outstanding clerks who favor the Association, and the results of this meeting already apparent. Several additional applications for membership have been received from Beaumont Freight Station, where we have heretofore been unable to break the ice, and among them is the application of the former President of the B. of R. C. local at that point.

Mr. McDaniels reports that he secured 15
774 applications from the clerks at the Creosote Works and will have no trouble in securing the balance.

Galveston Freight Station has a Local organized and now have 12 members and there is every indication that we will secure a large majority of the Clerks in the Freight Station. Mr. Ehlinger and Mr. Derrington will be in Galveston, October 27th, for the purpose of further soliciting membership at this point.

Houston Freight Station and Houston Passenger Station Clerks are now beginning to drop in with their application, four applications being received this morning.

I can hardly express to you how helpful it is going to be by having called in the representatives October 24th and their having had the opportunity of talking the matter over with you. One of the men expressed himself as having heretofore been handling the matter in a luke-warm manner, due to getting the enlightenment second-hand, but that he now feels he can outtalk any member of the opposition since he has received his information first hand.

We are taking this position on the proposition. Regardless of all of the injunctions, slander, and otherwise opposing smoke screens the B. of R. C. have placed

before the Association in attempting to poison the minds of the Clerks against us, we are working on our original plan of forming an Association which will be able to handle their affairs with the Management on
775 a Co-operative basis, and I personally feel that the Clerks, or at least a large number, are beginning to see things our way. This is emphasized by the applications we are now securing from the incorrigibles.

Respectfully,
F. C. EHLINGER,
General Chairman.

P. S.—Just received one application from a clerk in the Billing and Revising Dept. at Poydras Freight Station, also one from the Levee Foreman who is carried on the Station payrolls. This indicates that the opposition is breaking down there. Local representatives assure us of at least 14 additional members at Poydras now, and a member of the General Committee will go to Poydras Station on November 2nd (pay day) and solicit additional members.

776 Stipulation: It is admitted that R. C. Watkins is vice-president and general manager of the Louisiana Lines.

Complainants next introduced in evidence the following telegrams and letters:

EXHIBIT C-24.

Telegram.

48 ws zo ko 1020 am.

New Orleans, November 3rd, 1927. Rush.

J. G. Torian,

Houston.

Is there any objection permitting Committee Association Clerical Employees solicit freight station for memberships and how has this been handled in Texas? H. 65.

R. C. WATKINS.

(To Dan—Ask for quick answer.)

EXHIBIT C-25.

Telegram.

New Orleans, November 3, 1927.

Mr. Torian,

Dan, Dan 11-3.

Houston.

Get double quick answer from J. G. Torian to Mr. Watkin's file XH-65 date important.

JMV.

Rush.

777 EXHIBIT C-26.

Telegram.

Translation.

Houston, Texas, November 3, 1927.

Mr. R. C. Watkins,
New Orleans.

H-65. No objection to permitting Committee of Association of Clerical Employees to solicit memberships and they have been doing this on Texas Lines. J-1.

J. G. TORIAN.

778 EXHIBIT C-27.

Houston, Texas, November 7, 1927.
File 013.

Personal:
Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

I have received letter from Agent O. E. Boon at Beaumont, reading as follows:

"Several days ago Mr. Harper, representing the B. of R. C., called at this office and requested permission to say hello to the boys and to let them know that he was here. I permitted him to do this, requesting him to not take up any of the clerks' time; he then stated that there should be no objection to this as we permitted the Assn. of Clerical Employees to hold a meeting in the office during working hours.

"My investigation developed that about ten days or possibly fifteen days ago, Mr. Wade and Mr. Kolter called at the office during my absence and with the assistance of my Chief Clerk, Mr. M. D. Walker, held a short meeting in my private office discussing the new Clerical Association.

"This was done as stated above during my absence and without my permission and I have cautioned Mr. Walker to not permit another meeting in my office without first taking the matter up with me."

This to you merely as a matter of information.

Yours truly,

HJM-w H. J. MICKSCH.

779 EXHIBIT C-28.

The Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, January 6, 1928.

Mr. A. G. Baker,
Division Auditor,
Southern Pacific Lines,
Houston, Texas.

My Dear Mr. Baker:

It was with sincere regret that I received your communication of December 31st, 1927, tendering your resignation as Vice-General Chairman of the Association due to your promotion.

Believe me when I say that your intelligent council and assistance has been highly beneficial in the organization of the Association and your presence on the Committee will be missed greatly by Mr. Wade and myself.

Our past relationship has been such that I personally feel it impossible to replace you on our committee with one whose personality and ability are comparable.

We trust your new position will be satisfactory and prove a stepping stone to something better.

With kindest personal regards, I remain,

Sincerely yours,

F. C. EHLINGER,
General Chairman.

CC: Mr. J. G. Torian,
Mr. G. R. Cottingham.

780 Stipulation: It is agreed that P. C. Murray was the man in charge of the pass bureau.

Complainants thereupon introduced the following memorandum, being carbon copy of letter from file of J. G. Torian:

EXHIBIT C-29.

Annual Transportation.

Houston, Texas, August 11, 1927.

Mr. P. C. Murray:

Kindly be referred to our request of November 26, 1926, asking for annual pass for H. W. Harper, timekeeper, residence San Antonio, Texas, account General Chairman B. R. C. Our records show that annual No. A-25751 was issued on this request and would ask that you arrange to have this transportation canceled and the pass taken up if presented for passage hereafter.

Yours truly,

Complainants next introduced in evidence a letter and the notations on same as follows, being carbon copy of letter from file of Superintendent A. D. Mims:

EXHIBIT C-30.

San Antonio, Texas, August 20, 1927.

Mr. E. W. Walton, Condr.,
Building.

Dear Sir:

Under date of August 12th, notice was issued by this office and which notice has been posted in Dispatcher's Office as well as other points on the Division since, instructing Conductors not to honor pass No. 25791, favor of H. W. Harper, General Chairman, B. of R. C.

781 I find instead of lifting pass and collecting fare as directed, you honored same on Train No. 7, Houston to San Antonio, arriving San Antonio this A. M. Will you please advise what explanation you have to offer for this failure?

E-1 Yours truly,

Bcc—Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

In re the above.

Will you please advise if Mr. Harper was notified of the cancellation of his pass and requested to turn same in, if so, it will probably be in order to endeavor to collect fare from him for use of same in the above instant. No doubt he used pass on trip San Antonio to Houston, since Bulletin on the 12th.

A. D. MIMS.

Complainants next introduced in evidence the following letter:

EXHIBIT C-31.

Annual Tansportation of H. W. Harper.

Houston, Texas, August 22, 1927.

Personal.
Mr. A. D. Mims,
Superintendent,
San Antonio, Texas.

Dear Sir:

Your letter of August 20th to Conductor B.
782 W. Walton, with indorsement to this office, relative to annual pass of H. W. Harper, former general chairman for the clerks, having been honored from Houston to San Antonio, Train 7, August 19th. We are not having any further correspondence with Harper and did not send him notice of cancellation of pass.

Yours truly,
(Signed) J. G. TORIAN,
7-k Asst. to V. P. & G. M.

Complainants next introduced in evidence the following letter and also carbon copy of another letter, as follows:

783 EXHIBIT C-32.

Personal Record H. W. Harper, Clerk, and John W. Walker, Clerk.

Houston, Texas, September 22, 1927.

Personal.
Mr. C. R. Morrill,
Supt., San Antonio, Texas.

Gentlemen:

Clerk H. W. Harper of the El Paso Division and Clerk John W. Walker of the Houston Division have, as you know, been acting as officers of the national or-

ganizations of the Brotherhood of Railway and Steamship Clerks and have not performed any service for these lines for several years. These lines no longer recognize the organization of the Brotherhood of Railway and Steamship Clerks as having any authority to represent our employees and as these two individuals have been particularly hostile to the interest of the Company, there is no good reason to continue to carry them on our roster of employees. I attach hereto copy of request made on the pass bureau today to bulletin transportation which they hold and you should submit Form 2350 showing cause of leaving service: "Has performed no service for Company since (Harper 6-14-23 and Walker 4-9-25) and is dropped from the roster of employees." It will not be necessary to give these men notice of this action as they voluntarily gave up the position which they held to take on other work.

If these men carry any group insurance it, of
784 course, will not be continued under the group insurance plan after the current month, as they are no longer considered employees of these lines.

Should either Harper or Walker report to you for employment, you should say that we have nothing for them.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

cc—Mr. G. R. Cottingham.
1-k

EXHIBIT C-33.

El Paso, Texas, June 9, 1923.

Superintendent.

Mr. H. W. Harper, Timekeeper,
Timekeeping Bureau, El Paso, Texas.

Dear Sir:

As requested in your letter of the 7th instant, you are hereby granted an indefinite leave of absence, effective with June 15th, 1923, to enable you to assume duties as General Chairman of the Brotherhood of Railway Clerks on these Lines.

Yours truly,

25 C. R. MORRILL.

Copy Division Accountant,
Chief of Timekeeping Bureau,
Personal Record Clerk.

Complainants next introduced in evidence the following record:

785 EXHIBIT C-34.

Form 2350.

Change in Employees.

47894. No.....

To Personal Record Bureau—Houston.

Date effective: Month, September; Day, 24th; Year, 1927; Hour .....

Name in full(No Initials) incoming x-x-x-
Outgoing, Horace William Harper, JR-9986.

Occupation (State Fully): Asst. Enginemen's Timekeeper; Location, El Paso Division.

Position is: Old or New, old. If temporary, for how long? Permanent or temporary, permanent.

Change for: First-named is x-x-x

(In incoming employee is re-employed, reinstated, new employee or regular employee resuming work, so state Without Fail.)

Second-named is permanent.

Reason for Change: Has performed no service for Company since 6-14-1923 and is dropped from the roster of employees.

Remarks:

Amount of Bond, $.....

Dated Sept. 24, 1927.

(Signed) C. R. MORRILL.

786 Complainants next introduced in evidence the following telegram and reply thereto:

EXHIBIT C-35.

Telegram.

Houston, Texas, August 18, 1927.

A. D. Mims,
San Antonio.

Advise last day worked by clerk John W. Walker and date that he was given leave of absence account handling affairs of clerks' organization. J-23.

J. G. TORIAN, 9:20 am.

EXHIBIT C-36.

Translation.

San Antonio, August 18, 1927.

J. G. Torian,
Houston.

J-23. Was Chairman SA&AP clerks' organization time of merger. Has never worked on this division and was given leave of absence September 9, 1925. Refer to your letter September 13, 1925. Carried on our payroll for May 1st, 1925, as cashier SA&AP. E-48.

A. D. MIMS.

Complainants next introduced in evidence the following letters:

787 EXHIBIT C-37.

Service Record John W. Walker, Clerk.

Houston, Texas, August 20, 1927.

Personal.
Mr. G. B. Goodloe,
Supt., Victoria.
Dear Sir:

I am advised that John W. Walker, clerk, who was assigned to the Houston Division under the SA&AP Merger has not performed any service on the Houston Division since the merger became effective. On September 9, 1925, he was given leave of absence, but apparently was already on leave of absence at the time of the merger. Will you kindly give me any information that you may have as to the service record of this man and date that he was given leave of absence and on what account. Advise also date that he last worked prior to going

on leave of absence and what work he has performed since then. I am under the impression that you used him for a short while at one of the new stations on the Rio Grade Valley extension.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

Personal.
cy—Mr. A. D. Mims.

788 EXHIBIT C-38.

Service Record—John W. Walker (Clerk).

At Corpus Christi, Texas, August 25, 1927.

Mr. J. G. Torian,
Assistant to VP&GM.,
Houston, Texas.

Dear Sir:

Your personal letter August 20th.

It is my recollection that Clerk John W. Walker got a leave of absence from the former SA&AP for the purpose of doing committee work about April 1st, 1925, and he did not perform any service on this division since that time until February 7th, 1927, when Mr. L. W. Brannon, our agent at Edinburg, secured permission from me to use him to fill in as an emergency cashier at Edinburg until the position could be permanently filled.

Mr. Walker worked at Edinburg from February 7th to March 4th, 1927, inclusive, his rate being $4.90 per day. Since March 4th he has not performed any work on the Victoria Division.

Yours truly,
G. B. GOODLOE.

CC: Mr. A. D. Mims.

789 EXHIBIT C-39.

Person Record H. W. Harper and Jno. W. Walker.

Houston, Texas, October 4, 1927.

Personal.
Mr. A. D. Mims,
Supt., San Antonio.
Dear Sir:

See my letter September 22nd. Have not as yet received form 2350 showing John W. Walker out of service.

Yours truly,
(Signed) J. G. TORIAN,
5-a Asst. to V. P. & G. M.

790 EXHIBIT C-40.

Form 2350.

Change in Employees.

70325 No. 7310.

To Personal Record Bureau.

Date Effective: Month, September; Day, 30; Year, 1927; Hour .....

Name in Full (No Initials) Incoming .....; Outgoing, John William Walker.

Occupation (State Fully): Clerk. Location: Houston Division.

Position is: Old or new, Old. If temporary for how long? Permanent or Temporary, Permanent.

Change for: First-named is (If incoming employee is re-employed, reinstated, new employee or regular employee resuming work, so state Without Fail).
Second-named is out of service.

Reason for Change: Has performed no service for Company since April, 1925, and is dropped from the roster of employees.

Remarks:

Amount of Bond, $.....

Dated October 5th, 1927.
(Signed) A. D. MIMS.

791 EXHIBIT C-41.

Co. No. 15,846—Clerks' Injunction Case.

Houston, Texas, February 17, 1928.

Personal.
Mr. C. R. Morrill, Supt., El Paso, Texas.
Mr. A. D. Mims, Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksch, Supt., Houston, Texas.
Mr. R. M. Glover, Supt., Lafayette, La.
Mr. J. H. Fddy, Act. Supt., New Orleans, La.
Mr. J. H. Walsh, Supt., Austin, Texas.
Mr. K. C. Marshall, Supt., Houston, Texas.
Mr. J. T. Connor, Supt., TNO. Shops, Houston, Texas.
Mr. C. T. Davis, Supt., Wood Preserving Works, Houston, Texas.

Mr. L. B. Wood, General Storekeeper, Houston, Texas.
Mr. Percy Hewett, Supt. Telegraph, Houston, Texas.
Mr. M. H. Bonner, Special Agent, Houston, Texas.
Mr. D. H. Lusk, Mgr. Dining Car Dept., Houston, Texas.

Gentlemen:

In order that you may fully understand the Company's position in the above matter, I enclose herewith copy of statement given to the press by Mr. Lull and also copy of his letter of even date to General Chairman Ehlinger of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

Pending the final outcome of the appeal or appeals that will be taken in this case, we will continue the present rate of pay and the present rules covering working conditions, but we will deal with neither the Association or the Brotherhood in any matters involving our clerical employees until the litigation is finally over. Should you receive communications from representatives of either the Association or the Brotherhood, please take no action on such communications but send them to this office.

Please acknowledge receipt and understand-
792 ing.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

cc—Mr. H. M. Lull, Mr. G. S. Waid, Mr. R. C. Watkins, Messrs. Baker, Botts, Parker & Garwood; Mr. G. R. Cottingham, Mr. C. S. Fay, Mr. J. A. Power, Mr. R. W. Barnes, Mr. E. A. Craft, Mr. L. B. McDonald, Mr. T. R. Meeks, Mr. O. C. Castle.

Complainants next introduced in evidence the following excerpt from the agreement referred to in Mr. Torian's correspondence to his subordinates as an agreement between the defendant railroad company and the Association of Clerical Employees, effective November 1, 1927, being Section (c) of Article IV on page 13, as follows:

"Sec. (c). At the hearing or on the appeal the employee may be assisted by one or more duly accredited representatives of the Association of Clerical Employees."

H. W. HARPER, called as a witness for complainant, and having been duly sworn, testified as follows:

My name is H. W. Harper, I am a resident of Houston at this time. When this suit was instituted I was living over in San Antonio and had my office in San Antonio. I have belonged to the Brotherhood of Railway clerks, one of the plaintiffs in this case, since
793 the early part of 1918, I believe. This particular group of railway clerks was formed about that time. On second thought, that is 1919. I was in the Army during most of 1918. It was the early part of 1919. I was in this division of the group of clerks who organized on the Southern Pacific Lines from about the time it started here. The organization I am talking about Nationally, had existed prior to that time, on other lines. There had been no organization to speak of on the Southern Pacific Lines since the Southern Pacific Clerks' Strike of 1906. The Brotherhood was organized the last time along in September and October

of 1918, before my return from the Army. Immediately after my return I joined them but it had been organized before I returned. I was a clerical employee at the time I joined, of the defendant railway company, after I came back from the military service. I have been a member of this organization continuously since that time. I was working in the timekeeping bureau of the Superintendent's office at El Paso. I continued to work in that place as a clerical employee for some time before I became actively connected with the Brotherhood of Railway Clerks in such a way as to preclude the possibility of my performing my clerical duties also, until some time about June 15, 1923.

(By Mr. Crooker):

Q. Now, tell us briefly, Mr. Harper, the kind and character of organization the Brotherhood of Railway Clerks is as it relates to the Southern Pacific Lines in Texas and Louisiana, the type and kind and structure of the organization. Just describe it briefly in your own way.

794 Mr. Carter:

Your Honor, we take it that the constitution and by-laws, the fundamental organization of the concern, would be the best evidence of that. There has been a copy of that identified, and I have a copy of it here identified.

(Counsel for complainant stated to the Court as the purpose of the offer that the constitution and by-laws was the national organization of the Brotherhood of Railway Clerks, and he desired to make proof in support of the allegations of that part of his petition which

describes the plaintiff Brotherhood, in view of it's [its] bringing this suit as a representative of the clerks' organization.)

Objection overruled. Defendant excepts.

The Witness:

Our system's board of adjustment has merely to do with conditions of employment and wages on the Southern Pacific Lines. There is one on this railroad, what is known as a system board of adjustment, which is basically built up from the individual members constituting the local lodges. There are organized, at different points on the railroad, local lodges. The members of the organization belong to these various locals, and we have a system of representation which is in accordance with the grand lodge constitution and by-laws in which it is provided that clerks at stations or in departments, in separate departments at the same station, where there are as many as three or four employees located, those employees have the right under the law to select what is known as a local chairman, or a local representative. It is the function of that local committee to handle such grievances in that department, or at that particular station as may arise with the
795 officers immediately in charge of that department. Our laws conform with the Grand Lodge constitution and by-laws, and they will find that in there. Each one of these local lodges have their constitution and by-laws to apply to each one of those.

(To which testimony defendant objected upon the same ground.)

On examination by the Court, he testified:

What I am talking about, the system provided by those local constitutions and by-laws all conform to the Grand Lodge constitution and by-laws, and that is the plan that is set out in there. What I am telling about already appears in that constitution and by-laws, the last statement that I made appears there in the Grand Lodge constitution and by-laws. The constitution and by-laws of the local lodges are not necessarily modeled after the constitution and by-laws of the Grand Lodge, but are in conformity with certain principles set out in the Grand Lodge constitution and by-laws, to which they must conform. If you will permit an illustration, perhaps in the Masonic Order the Grand Lodge would stipulate certain conditions governing the constitution and by-laws of the local lodge, the Masonic Lodge, and it is just to that extent that we conform to our Grand Lodge. I mean that it is just like any fraternal body in having a Grand Lodge and having a local chapter of that body. They do not have to be identically worded but they must not conflict.

(Thereupon, the Court overruled defendants objection, to which defendant excepted.)

796 Upon further Direct Examination, the witness testified:

These local chairmen are elected by the men who are directly in the department from which those local men are elected. That is the practice and custom. Then those local chairmen on any division of a railroad get together and from among themselves select a man to act as the division chairman. It is the duty, I don't know that it is necessary, but I think you will understand my

story about it. It is the duty of these division chairmen to handle grievances, which the local chairmen have not been able to handle conclusively with the local departmental heads over them, with the division superintendents. Then these division chairmen constitute what we call the system board of adjustment. There is only one for each operating division on the railroad. These division chairmen constitute for the Brotherhood on this property what actually is the board of directors of the Brotherhood on this particular property. These division chairmen have constitutions and by-laws; as being members of the system board of adjustment they make the constitution and by-laws governing the performance and the activities of that system board of adjustment. These division chairmen then in turn elect what is known as a general chairman. They don't necessarily have to elect a general chairman from among division chairmen. They can elect him from the membership at large. However, the actual election of the general chairman is by vote. In short, it would be called a representative organization, each group of members electing in turn a chairman and then the several group chairmen electing a division chairman and several division chairman constituting this system board of adjustment and electing one general chairman. I am that General Chairman who was elected. I was last elected in 1925. Prior to that I was elected in 1923 to fill out the unexpired term of Mr. King, my predecessor. I have held the position ever since then continuously, since June 15, 1923. From time to time there are elections, biennially.

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When I testified with reference to divisions and groups and stations, I was talking about exclusively the defendant railroad company's stations and division;

we arranged our committees to conform to the operating divisions of the railroad, so as to facilitate, so that one division chairman will handle all of his matters with the same division. In other words, our districts are made to conform with the operating divisions of the railroad. They have absolutely nothing to do with the Missouri, Kansas & Texas or the Missouri Pacific lines. The organization as I have described it from its foundation on the membership, is restricted exclusively to the particular railroad. With respect to our finances and other ways, as far as the operation, the practical operation, and the usages and customs to which I referred relate, the system board of adjustment on the Southern Pacific Lines is separate and distinct from the head organization off up in Cleveland, Ohio. We have self-autonomy in the handling of our affairs both in the assessment of our dues and in the handling of issues between the employees and the company. These customs and usages to which I have referred were ob-
798 served during the past seven years with respect to the organization of the system board of adjustment, the election of these various representatives and so on, by the clerical employees of the Southern Pacific Lines on the divisions from New Orleans to El Paso and Denison to Galveston and the branches; that is, the lines covered in this lawsuit by this defendant railroad company. I have got the system board by-laws. I am the General Chairman of the system board of adjustment, and have been since 1923.

That is, of this Brotherhood of Railway Clerks, which is the plaintiff in this suit.

(By Mr. Crooker):

Q. And you, yourself, have been joined individually in this suit as an individual clerical employee of the Southern Pacific Lines, the different lines. Now, what has been your status, how long have you been employed by the defendant railroad company as a clerical employee?

Mr. Carter:

We interpose this objection at this point, Your Honor, that that admission of his leave of absence clearly takes him out of the class of employees that is authorized to be dealt with under this Railway Labor Act.

The Court:

Overrule the objection.

Mr. Carter:

Well, we interpose that objection that this witness here by his testimony already introduced in the record clearly shows that he is not within the class of employees as defined in the Railway Labor Act, authorized to act for or to be protected under the terms of that Act.

The Court:

Overrule the objection.

799 A. I have been a clerical employee of these lines since February 5, 1918, and I still am, and during all of that time my status as an employee has been identical with that of any other employee in each and every respect so far as I know with the exception that I have not drawn any pay during my leave of absence from the railroad company.

Q. Do you get the ordinary hospital benefits and pass privileges?

Mr. Carter:
Don't lead him.

Q. Well, do you or not get the ordinary hospital benefits of the other employees?

The Defendant:
We object to that because that is a leading question.

(Which objection was overruled by the Court, to which defendant excepted.)

A. I have the same hospital privileges as does any other employee on the railroad, or as does any other employee who is actually doing work during my leave of absence for the railroad company. In addition, I enjoy the privilege of the protection afforded by the company group insurance. I was permitted to take that insurance out, in the sum of $2,500.00, on the basis of what my salary would be were I to return from my leave of absence. I have continued to enjoy those hospital benefits and group insurance benefits up until perhaps September of last year; I had no notice when either of those were discontinued, but from what I heard here offered in evidence this morning, I am inclined to believe it is no longer effective. But whatever
800 the evidence is, I had no notice that those privileges which had been extended to me all along had been discontinued. During all of the time I have been occupying the position of this general chairman I have had other privileges and benefits usually accorded

employees; my mother was given transportation in exactly—not exactly the same conditions as would have been given if I had been on my timekeeping desk, or exactly as would be given to other employees in any other capacity on the railroad. The pass rules applied to me exactly as it did to any other employee under similar conditions. I was given an annual pass over the El Paso Division by reason of the fact that I had completed five years' service. I am now entitled to a pass, to a system pass by reason of the fact that I have completed ten years' service, and I haven't got it, I haven't made any request because I have had one good over the System in connection with my duties as general chairman, and my ten year pass would be what we would call a service pass. That is more or less complimentary. Of course it is useful but it is more or less complimentary, but I was given a pass in addition to that for use in connection with my duties as general chairman of the Brotherhood of Railway Clerks. That was exactly the same treatment that was accorded to each of those gentlemen, to Mr. Ehlinger, Mr. McDaniel, Mr. Wade and others, holding similar positions with other railroad organizations. The duties which I actually performed out there in that timekeeper's job at El Paso were those of an ordinary garden variety of clerks, railroad clerks, clerical employees. I held that

801 from February 15, 1918, until June 12, 1923, less the time I was absent in the Army. From June, 1923, on up to the present time I have been on leave of absence. Under the custom and usage of the defendant railroad company in connection with men representing labor organization in the same status or position I was, if their leave of absence was canceled these men were permitted to return to the service, make

use of any seniority which they had accumulated before their leave of absence together with the accumulation that come about during their leave of absence. In other words, if a man was employed from 1915 to 1925 and was out two years as general chairman, why that was included in his seniority rights. He continued to accumulate seniority, and when he was supplanted as chairman for any organization, he was permitted to return to the service without prejudice and to place himself wherever his seniority would entitle him to go. I am bringing this suit individually as a clerk, and so far as I represent the clerks as representative of the clerical employees in the employ of the defendant railroad company to the number of about 1700. As of January 1st of each year the railroad company issued what is called seniority rosters of the clerical employees.

Q. Did your name appear on each and any of them?

(To which defendant objected on the ground that the question whether his name appears there can be proved by the roster. Which objection of the defendant was overruled, to which defendant excepted.)

A. My name has appeared on every one of them except on the roster as of January 1, 1928. I have not seen it. I don't know whether it appeared there
802 or not. On all the rest of them it has appeared.

The Witness:

We were first recognized under Supplement 7, General Order 27, of the Director General of Railroads, and then a controversy arose over the question of just who had the authority to represent the clerks on the

railroad, in 1921 or '22 after the Labor Board had by Decision 119 canceled our contract, what was known as the National Agreement. I'm limiting myself to the question of controversy on the Texas and Louisiana Lines. In connection with the reaching of the agreement, to explain this National agreement which had been canceled at that time, it was necessary for the controversy to go to the United States Railroad Labor Board and the Labor Board issued some instructions and a decision, I believe, and the case came back and was decided in a conference after we had shown by petition that we had authorizations from a majority of the employees on the lines exclusive of the general offices. The agreement was reached in 1922. I believe the controversy arose in 1921 and lasted through into the early part of '22. The agreement was signed, effective as of July 1st, 1922. No other controversy arose until the next year, 1923, when we sought another increase in pay. As soon as we presented the request for increase in 1923, the Company immediately questioned our authority to represent the employees and the dispute finally got into the hands of the United States Railroad Labor Board to determine certain conditions in connection with how we would spread a ballot. The only candidate for representation at that time was this Association. It first appeared in 1923. During the previous controversies I have been talking about, it had not existed, the Company was just playing the field against us. Immediately prior to the birth of the Association of Clerical Employees we had initiated a wage request, that is, we had served a thirty days' notice on the management of our desire to negotiate an increase in pay. About coincident with the time of the service of my notice upon the man-

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agement for this wage increase, the Association of Clerical Employees developed. That was immediately prior to my time coming on as chairman. I am not absolutely familiar as to the exact date as to when it did first appear in 1923. I know it was in connection and almost coincident with the filing of our request for an increase in pay. I know that from the files. That was the controversy at the time the reference to the Railroad Labor Board occurred as to who was to represent the clerks, the final culmination was the spreading of a secret ballot in which the Brotherhood got six hundred and something and the Association got four hundred and something. We went down to count the ballots and the Company took the position that in order to have authority to represent the employees that our ballot must be more than a majority of all of the potential voters on the railroad rather than a majority of those who had actually cast their ballots. So that dispute was referred to the United States Railroad Labor Board and their decision in the matter, Decision No. 1971, was to the effect that representation would be determined by a majority of those who had exercised their franchise, and directed the Railroad Company to meet and recognize and do business with the Brotherhood, as being the duly accredited representative of the clerical employees on this line. We immediately tried to go about the doing of business as being the duly accredited representative of the employees, and did in fact, on October 16, 1923,—November 13th, 1923, reach an agreement with the management with regard to the application of Decision No. 1986 of the Labor Board. The Railroad Labor Board Decision No. 1986 appropriated a sum equal to an increase of two cents an hour to all employees but it

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stipulated that the application of this money must be done by agreement of the parties at issue, that is, some men might get three cents while some other men might get only one cent. It was in connection with eradicating these inequalities that might be on the line. At that same time we had a request in for revision of our rules to include vacation, sick-leave, time and a half for holiday services and overtime, and after we had gotten the wage controversy disposed of—the dispute was continued in 1924 in connection with these changes in rules. The Company declined to meet us and it became necessary to request the Labor Board to have officers of the Company cited to appear there to show cause why they should not be held to be in contempt of the decision of the Labor Board. The Company then agreed to meet and recognize our Committee, and we incorporated these rules in our agreement. The question did not arise again. There was no question raised until we again sought an increase in pay in 1925. November 22nd, 1925, we filed the usual thirty days' notice. Conferences were held in December. We were notified in January that there was no basis for our request and it was declined. The matter was submitted to the then United States Railroad Labor Board in February, and within a week or ten days the Railroad Company filed its answer. In the meantime the Railroad Labor Act had been passed and the Labor Board had been abolished, but they had been given sufficient time to remand these cases. The Board remanded all pending cases, including our wage case, back to the parties at issue for another effort at settlement and agreement, settlement by agreement. That was May 14, 1926. Now from 1923 to 1926 during all these different various negotiations and contentions and

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disputes in all these things between the clerks and the railroad company, this defendant railroad company, our organization was representing its clerical employees. There was no question raised by the defendant railroad company in any of those matters from the time the Labor Board made its decision in '23 up till 1926. In fact, Mr. Torian summoned Mr. Walker and me from Kansas City to attend to one matter. In several instances we were called upon by him to come down and see him. Instead of us seeking conferences, he asked us to come in and confer with him about matters of interest to the clerks. Throughout 1926 my organization continued to be treated with by the defendant railroad company as representative of the clerical employees. From May, 1926, for the next year our organization, the plaintiff here, continued to represent the clerical employees of the Southern Pacific. The defendant did not make any contention about it up till July, as I recall, of 1927.

806 In May or June of 1927 we had procured the assignment of Governor Neff as a mediator in our wage dispute with the Southern Pacific Lines. We were asking for this same wage increase that we had been trying to get since November, 1925. The negotiations and contentions had taken various forms up until June or July, 1927. Then Governor Neff came, arrived here June 2nd. He heard three cases. He advised us that he was handling the three cases concurrently. He stayed here until June 15th and left to attend a meeting of the Board in Washington and returned in July, about the 25th, at which time he told us that the management had definitely notified him that they would not recognize us as being representative of the clerical employees on these lines, and that they had nothing to mediate or arbitrate with our organization.

That is the first notice that we had of the defendant railroad company's refusal to treat with us and to recognize the right of our Brotherhood of Railway Clerks to represent its employees. July 25, 1927, is the approximate date of it. This suit was brought shortly after that. We had submitted it, of course. We did not have any definite information. We knew about the attempt to organize the Association but that was the first definite information that we had from the Management that we were not recognized as being representative. The first information that we had of any activity of this company union, was May 26th. We received a telegram from Beaumont that Mr. Nystrom was down there interviewing clerical employees with regard to the formation of another Company union. That was May 26th before Governor Neff was to arrive on June 2nd, and subsequent to the notice which had been received that he was to be here on
807 June 2nd. The individual activities of none of those different men in behalf of the Association of Clerical Employees came under my personal observation except that of Mr. Hollimon. I was in Dallas on June 20th, went in the local freight office, shook hands with the cashier, and the agent came along and told me that he would not permit me to talk to those men while they were on duty. I started out and saw Mr. Hollimon standing in another section of the room and he saluted me and spoke and asked what I was doing up there, and I told him that I was up there right in behind the rumps and he asked if I was going to have a meeting, and I told him yes. He said "Where?" I said, "I don't know. I have just got in here. I've got to make the arrangements for the meeting yet." "Well," he said, "I am up here for the same purpose, and I don't want our meetings to conflict."

Eventually, I suggested that we make it a joint affair, which he, of course, declined. So I went on out and sat down in the lobby, outside hall of the station. Mr. Hollimon came up to me and told me he wanted me to get out, that it was a bad influence on the clerks to have me sitting around there. I told him I wasn't bothering anybody, and during the course of the conversation, Mr. Hollimon stated to me, he said, "Now, if you think that the law prevents me or any other officer of the railroad from organizing this association of clerical employees, I just want you to know that I have made the other stations on the Dallas division trying to influence or persuade these clerks on this division to get into this association, and I am here for the same purpose. That is Superintendent
808 Hollimon. That is the one Mr. Ehlinger is chief clerk to. That is about all of the conversation, I believe, that is relevant. I received report from the General Chairman of the Brotherhood of Railway Clerks on the Pacific System, Southern Pacific Railway Lines, saying there was going to be a conference in El Paso on June 7th and that in so much as I as General Chairman of the Brotherhood of Railway Clerks on these lines was party to an agreement then in effect, and carrying a provision in regard to this change in any manner, suggested that I come to El Paso. This was a contract which was in effect out there which had been negotiated between the railroad company, on the one hand, and a man named Lang representing the Pacific System employees, and I representing the Atlantic System employees. The purpose of that meeting was to change the rates of pay in that terminal out there, to reach an agreement in regard to the rates of pay for those employees. At the appointed hour Mr. Lang

and Mr. Christman and Mr. Whisner and I went to the designated office. That was on September 28, 1927. We went up to the conference room and Mr. Mann was acting as doorkeeper and the door was locked, but when we rapped, why he opened the door and let Mr. Lang and his committee in, but put his hand across the door to exclude me, and said that he could not let me in there, and I asked him why, and he said that they had a committee in there to represent the employees. And I told him that I had authorizations from the employees, and not only had I authorizations but I had been directed by the employees to present myself there to represent them. Mr. Mann said that he
809 wouldn't get into any argument with me about it, that I just couldn't go in. So, I told him that I had the authorizations there in my brief case, authorizations from a majority of the railroad clerks on these lines as a whole; that in addition to that that I had authorizations from the men involved in the controversy which was to be the subject of this conference, almost solidly, with one exception, as I recall, a Mr. Charles had not authorized us to represent him. He said there was no use for me to argue with him, that they had a committee in there to represent the employees and I could not come in, and he placed his hand at one time on my shoulder to exclude me. I was excluded.

Complainants thereupon introduced in evidence the following letter:

EXHIBIT C-44.

(On Stationery of the Texas and New Orleans Railway Co.)

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, November 14, 1923.

Representation Clerical Employees, Outside of General Office.

Mr. J. C. McDaniel,
General Chairman,
Association of Clerical Employees,
2024 Chestnut Street,
Houston, Texas.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Gentlemen:

At conference yesterday, I advised that the Carrier would comply with Decision No. 1971 of the United States Railroad Labor Board and recognized
810 the Organization of the Brotherhood of Railway and Steamship Clerks until such time as the majority of the clerical employees by secret ballot selected other representation, but that the carrier did not feel that the present minority representation of the Clerical Employees was fair to either the employees or the railroad. Out of the 1635 clerical employees in the

service of these lines, outside of General Office, there were only 611 who voted to authorize the Brotherhood of Railway and Steamship Clerks to represent them. Expressed in percentages, this authorization constitutes only 37.37% of the employees directly interested, which cannot be termed anything but minority representation.

There can be nothing but unrest and general dissatisfaction so long as minority representation is in effect. The carrier is placed in a position where it has, on the one hand, a demand from the representatives of the Organization of the Brotherhood of Railway and Steamship Clerks to recognize them as the representatives of all of the 1635 clerical employees, although it is a known fact that they do not, at this time, hold authority of a majority of the employees to represent them, whilst on the other hand, the Carrier has a protest from the representatives of the Association of Clerical Employees against the recognition of the organization of the Brotherhood of Railway and Steamship Clerks, as the duly authorized representatives of the 1635 clerical employees on these Lines, as the Association of Clerical Employees claim to hold definite authority from the majority of such employees.

These conditions can be overcome and har-
811 monious relations established between the employees themselves, as well as with the Carrier by the spreading of another ballot. The Carrier, therefore, asks that in fairness to all concerned, you agree to the spreading of a secret ballot which shall conform in all respects with the provisions of Decisions Nos. 218 and 220 rendered by the United States Railroad Labor Board. We request that you signify, at the earliest possible time, your agreement to proceed with the spreading of another ballot, or advise in case of

refusal to do so, as in the latter event the Carrier will be under the necessity of referring this dispute to the United States Labor Board, under the provisions of the Transportation Act.

In this connection, I desire to invite your attention to Decision No. 2004 which was rendered by the United States Railroad Labor Board under date of November 2nd, 1923, and which covers a situation very similar to that which exists on these lines.

Yours truly,

(Signed) J. G. TORIAN,

Ass't. to V. P. & G. M.

The Witness:

I received various letters from Mr. Torian from time to time and from the management of the defendant railroad company during that three or four year period with reference to various matters that were pending and negotiations between them on the one hand, and the clerical employees on the other, in which I was addressed as the representative of the clerical employees.

812

Complainants thereupon introduced four letters as follows:

813 EXHIBIT C-45.

Morgan's Louisiana & Texas Railroad & Steamship Company.
Louisiana Western Railroad Company.
Iberia & Vermilion Railroad Company.
The Galveston, Harrisburg & San Antonio Railway Company.
Texas & New Orleans Railroad Company.
Houston & Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston & Shreveport Railroad Company.
Southern Pacific Terminal Company.
Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, November 13, 1923.

Application of Decision No. 1986, United States Railroad Labor Board.

Increase in Pay of Clerical Employees.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

At our conference today, we discussed the question of application of the wage award of Decision No. 1986 of the United States Railroad Labor Board to the Clerical and Station forces on these Lines who come under the decision and are covered by Sections 1, 2, 3, 4 and 5, Article 1, of the award and you stated that you were agreeable to making a flat application of the award just as it reads, giving to each employee
814 in each class the hourly increase that is specified in the above mentioned sections 1, 2, 3, 4 and 5 of Article 1, and without varying from the hourly increases awarded.

If my understanding is correct and this flat application of the award meets your approval, kindly let me have your acknowledgment.

Yours truly,
(Signed) J. G. TORIAN,
Ass't to V. P. & G. M.

Accepted:
(Signed) H. W. HARPER,
General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Service Employees.

815 EXHIBIT C-46.

Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, August 23, 1926.

Labor Board Decision No. 4197, Docket 5171-22.

Request for Increase in Rates of Pay of Clerical and Station Employees.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Your joint letter of August 16th relative to request filed by your committee for increase in rates of pay of clerical and station employees on these Lines, who are represented by the Brotherhood of Railway and Steamship Clerks.

This matter was fully gone into at the various conferences already held and we are unable to agree with or understand your statement alleging discrimination against the clerks and alleging failure of wages
816 to keep pace with the cost of living. The detailed figures submitted in conference showed the contrary to be the case, and that the clerks had been very liberally treated in the matter of wage increases and under our present wages these employees have greater purchasing power than under the wages and living costs of 1917 or under the peak wages of Decision No. 2 and the living costs of June, 1920.

There is no basis for any further increase in wages at this time and we fully concur in the decision given you by Mr. Torian.

Yours truly,
(Signed) G. S. WAID,
V. P. & G. M., Texas Lines.

(Signed) R. C. WATKINS,
V. P. & G. M., Louisiana Lines.

(Indorsement on letter):

Received at 211 Moore Bldg., 9:00 A. M., September 18th, 1926, in envelope post marked Houston, Texas, 9:30 P. M., September 17th, 1926. Jno. W. Walker.

(Indorsements on Envelope):

Southern Pacific Lines,
General Offices,
Houston, Texas.

Houston, Texas.
Sept. 17th, 1926,
9:30 P. M.

Mr. H. W. Harper,
211 Moore Bldg.,
San Antonio, Texas.

817 EXHIBIT C-47.

The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager.

L. H. Cecil,
Assistant to Vice-President & General Manager.

L. B. McDonald,
Assistant General Manager.

Houston, Texas, August 19, 1926.

Mr. H. W. Harper,
General Chairman,
Brotherhood of Railway and Steamship Clerks.
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Your letter of August 16th, addressed to Mr. Waid, in connection with proposal for increase in rates of pay for the classes of employees represented by your organization on these Lines, has been received.

Mr. Waid is absent and is not expected to return for two or three weeks. Your letter will be referred to him upon his return.

Yours very truly,
(Signed) L. H. CECIL.

cc—Mr. J. G. Torian.

818 EXHIBIT C-48.

Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

Houston, Texas, March 14, 1927.

Rearrangement of Mileage, Houston & Victoria Divisions and Establishment of Operating Division Designated as "Terminals Division."

Mr. H. W. Harper,
General Chairman, B. R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Effective March 20th, 1927, the mileage between Victoria and Kenedy via Cuero which is now a part of the Victoria Operating Division will be made a part of the Houston Operating Division and the line from West Junction to Galveston which is now a part of the Houston Operating Division will be placed under the jurisdiction of Superintendent O'Donnell and designated as "Terminals Division."

Would like to discuss with you the question of seriority of employees on the districts named above who come within the scope of the Clerks' Schedule and will name 10 A. M., Friday, March 18th, for this
819 purpose.

Kindly let me have acknowledgment.

Yours truly,

(Signed) J. G. TORIAN,
5-8 Asst. to V. P. & G. M.

The Witness:

While I was in El Paso, following the El Paso meeting, and away from headquarters, my pass was canceled, which left me out on that end of the line.

I heard the testimony of those men who were in that conference in Mr. Lull's office on September 6th. Those things occurred substantially as they told them.

On examination by the Court, he testified:

The question of whether my association or the other one represented the clerks was discussed with Mr. Lull there. I discussed with him whether something should be or could be done to ascertain the truth of that fact, which side really represented them. I asked him if he would consider any kind of a reasonable proposal to ascertain the wishes of the employees in regard to the matter. And he declined. He said they had an agreement with the Association and that the incident was closed as far as he was concerned, that he would not give any consideration to any kind of a plan to determine the wishes of the employees. I stated to him that representation by me over a period of nine years would justify a continuance of that representation until such time as the employees were given an opportunity to select other representatives. I did not claim
820 that the Brotherhood had the right to represent the employees, no matter what they decided for themselves. I took the position that we had been elected by a ballot, the provisions of which had been agreed upon mutually, and that we were willing to submit it to the employees as to their wishes and be governed accordingly.

On further Direct Examination, he testified:

I had the authorizations with me. I told him that Mr. Waid or Mr. Torian had declined to even examine or inspect the authorizations which I had there. I told him that I had the authorizations there, and that if he

cared to look at them, that he could see them and examine them for himself, and he declined to do that, saying that he did not care to make any inspection whatsoever. There was no other occurrence there that might be significant unless it was his agreement to give me a pass at that time as being a company employee. I asked him for a pass to Washington. He did not tell me then, but he told me to call him later, he told me he would not give it to me but he would give me a pass to San Antonio, which he did, and which I rode back to San Antonio after my Washington trip. The high lights of that controversy occurring back during the past four or five years were gone over and discussed thoroughly in that conference with Mr. Lull. I went into a discussion of the history of this representation question which has plagued us since 1921 or '22, and then in addition to that I went into the wage issue with him at quite some length. In fact I believe that I covered most all of the details. The conference was more or
821 less extended, probably two hours and a half.

I went to New York the next morning following that. I was in New York on September 9th and took the matter up with Mr. McDonald. My conference with Mr. McDonald was very much along the line of the conference with Mr. Lull except not so extended. I explained to him our position with regard to the controversy and tried to prevail upon him to issue such instructions as might be necessary to cause the subordinate officers on the property to comply with the law and to join with us in some kind of an effort to dispose of this representation question. Mr. McDonald's attitude was that the thing was handled locally and whatever they did would meet with his approval. I have not been riding on my pass lately. I paid my fare to get home.

I made an analysis of the authorizations which was submitted in Court by the defendant T&NO Railroad Company. I went over them and made a count of how many of them were personal office force, how many for truckers, how many for janitors and the different classifications of employees and prepared a tabulation. This is the tabulation in my handwriting which I prepared. As I prepared it with Mr. Stearns I actually made the tabulations and made all the counts. I have checked it and it is correct to the best of my knowledge.

Complainants next introduced in evidence the tabulation identified by the witness, as follows:

822

EXHIBIT C–49.

Recapitulation of Division Sheets.

Divisions.	Duplications.	Not in Service.	Truck Drivers.	Freight Truckers.	Janitors.	Elevator Operators.	Santa Fe Employes.	L. C. & N. R. R. Employes.	Messenger Boys.	Personal Office Force.	Ass't Agent Ft. Worth.	Telegraph Operators.	Later signatures with B. of R. C., but before Aug. 6, '27.	Retractions from Association.	Not Dated.
Lafayette	1	..	..	..	..	..	..	..	3	11	..	..	6	..	..
Dallas	..	..	..	..	..	..	1	..	3	11	1	..	9	..	3
Houston Gen'l. Shops	..	..	..	..	..	..	..	..	5	8	..	..	4	..	46
Austin	..	..	..	..	..	..	..	..	..	9	..	..	5	..	27
Victoria	..	..	..	..	..	..	..	..	2	10	..	1	15	8	66
Dining Car Dept.	..	..	..	..	..	..	..	..	..	..	..	..	..	..	6
Houston Gen'l. Stores	..	1	6	..	..	..	..	..	2	3	..	..	3	..	71
Houston	1	1	..	..	..	..	..	..	5	18	..	..	..	..	7
Beaumont	2	2	..	1	..	..	..	..	7	11	..	..	28	8	118
Houston Terminals	1	..	..	..	..	..	..	..	..	4	..	..	2	..	15
New Orleans Terminal	..	..	..	..	..	..	..	..	3	14	..	..	4	..	3
El Paso	..	2	..	..	2	1	..	..	2	11	..	..	..	..	60
Totals	5	6	6	1	2	1	1	7	32	110	1	1	76	16	422

Not Appearing on Seniority Roster	Name no Representation.	Authorize an Individual Only as Representative	Ass't to Agent N. O.	Dining Car Dept. Employes.	P. B. X. Operators.	Baggage Agent.	Creosote Works Employes.	Auto Messenger.	Total Eliminations (less names eliminated for more than one reason).
18	..	85	..	..	..	..	..	..	85
5	..	138	..	..	..	..	..	..	138
3	24	53	..	..	..	..	..	..	53
9	66	..	..	..	..	..	..	..	28
..	..	..	..	6	..	..	..	..	66
..	..	71	..	..	..	..	..	..	6
..	..	111	..	1	3	1	..	..	71
..	..	..	..	..	..	..	..	..	111
15	..	84	..	..	..	1	12	1	121
..	..	59	1	..	..	..	..	..	110
..	..	60	..	..	..	..	..	..	63
									60
52	90	661	1	7	3	2	12	1	912

823 **On Cross Examination, he testified:**

I determined whether or not each one of these authorizations came within a particular class or belonged to another class, sometimes from personal information and other times from the manner in which they signed on the authorizations, as I recall it. I think perhaps that I did have to refer to seniority rosters in regard to some truckers to see whether or not they were carried on the truckers' seniority roster or whether they were carried as clerks. They were not made up in large measure from my recollection or just from my own mental classification based on the knowledge of the man and his employment, his position; they were made up from the authorizations themselves. Most of them have their titles. If a man said he was abstract clerk I didn't have any way of running it down to see whether or not he was or was not. I used the sheets of paper themselves plus a reference to the seniority rosters of the railroad company. With regard to the classification of personal office force employees I took the classification which the company had given, which was known to me of my personal knowledge. In making up this paper which I have introduced here in evidence I did not disregard the information contained on the authorizations which had been signed by the employee who signed the authorization. I mean that if the authorization said I am a freight clerk or trucker, I took that as the basis for my classification. I did not question the statement of what he was except with respect to possibly P. Martinez, janitor at El Paso, whom I happen to know personally, but I went to the roster to see what classification the company
824 put on it. They classified him as a janitor. He can write P. Martinez and no more. In

the majority of instances wherever he stated what he was on there I accepted it. If he said he was abstract clerk or billing clerk I accepted that. If he said Yard Clerk I did not dispute that. In other words, what the man put after his name as timekeeping clerk or waybilling clerk I did not go anywhere and make any dispute or contention about that, what he himself claimed to be. What I meant by stating "in the majority of cases," was that for instance P. Martinez did not have any title behind him. Well, I went to the senority roster. I knew that he was a janitor. Wherever they did not show on the paper what they were I would go to the company's roster and find out. Wherever they showed on the paper what it was, I took that as correct.

As to the clerks listed as personal office force, they were listed according to their occupation, and I referred to the rules of the company and placed those men in accordance with those rules in the personal office column. That is in accordance with the recognized classification of personal office force that the company puts on them. If a man said he was abstract clerk I did not put him in the office force.

I am afraid I misunderstood the question. Here's the idea. If they show a man as being chief clerk to the division engineer, I listed that man as being a personal office force employee. I might have no knowledge at all about what particular job he was on but if he said he was chief clerk to the division engineer, I listed that man as being a personal office force employee because the company rolls so classified him. Except the personal office force, everybody is classified in the exact title that appeared on the authorizations with the exception of a few that were not given

any classification, and as to those I checked up and put down the classifications shown on the seniority rosters.

On further Cross Examination, he testified:

If Mr. Nicholson wanted to check up this long sheet of yellow paper and the figures on there made by me, he could correctly check up that by taking the papers which I inspected, that is, the authorizations that I inspected when I had those authorizations before me and made that yellow compilation.

I was insured in the group insurance merely because I was an employee of the Texas and New Orleans lines in Texas and Louisiana; that is the way my insurance came about. With reference to whether it was not because of any property right or interest that I had in the railroad or anything of that kind; certainly that is one of the considerations of the job, that is one of the values of employment. I got that because I was an employee of the railroad company. I could not tell you when I took out that insurance. It has been several years. I haven't got the record of the paid up memberships of the Brotherhood of Railway Clerks with me. I was served by a subpoena. I haven't got that kind of a record. I could not say that Mr. Walker has that kind of a record as to the paid up membership. I don't believe that he has that kind of a record in detail. He can perhaps give you an approximation. I do
826 not keep any kind of a record of the membership of the Brotherhood of Railway Clerks. I could take up with each one of the local lodges the number of Brotherhood members, railway clerks, and get an accurate statement.

Q How many of the paid members of the Railway Brotherhood have you got? How many paid members?

A. I could only approximate it because they are like railroad clerks.

(Whereupon, complainants objected on the ground that the matter in issue is one of representation rather than membership and that the question to be determined is one of the desires and wishes of the clerical employees rather than their actual affiliation. Complainants also objected to disclosing the personnel of its membership.)

Mr. Wahrton:

We don't care anything about the personnel. We want to find out how many members they have got that are really members. The only way to test your membership is are you paying your dues. Any men that went on the list five or six years ago and are not paying their dues are not really members. How many bona fide members of the organization have they got at this time, that is what we want to find out.

The Court:

I think the important thing is, whether the clerks want this organization or the other organization to represent them, and therefore I don't think it is material. For the record and for this matter I will overrule the objection of the other people. * * * *

827 The Witness:

I have none of the records in my possession at this time called for in this subpoena served upon me, reading, "and bring with you any and all records and all books of account showing the full paid up

membership of the Brotherhood of Railway and Steamship Clerks, etc., since January 1, 1918, to January 1, 1928." I am not the custodian of any such records as that. I am more or less disconnectedly, familiar with such records. I don't know that I am familiar enough with these books and records to state how they are kept. Such as there are I have seen. The local lodges keep a record of our membership. We only have an improvised record that Mr. Walker keeps, to try to keep track of the members of each local. There is a membership due or fee of some kind paid by each member. Mr. Walker keeps a record of the remittances from each local lodge. I keep no record and have no record. Mr. Walker as I understand it has an improvised system of his own for keeping a record of the payments that are received. Now when I was familiar with them and actually kept track of those things, those matters, why, all the record I kept was just the remittances from the local lodges. Those remittances coming in did not specify the persons who had paid their dues until Mr. Walker improvised this form of his. He has an improvised form now which has the list of the names of each local lodge on that and the payment of dues is inserted in the proper space beside the name of each one of those. This is not a standard form. It is just like I said, Mr. Walker has improvised that merely for his information. We don't keep any record as to any individual em-
828 ployee because so long as the local lodge does not suspend him, why, that is something that is entirely within their scope. There is in Mr. Walker's possession such a record as I have described there, being, generally speaking, a list showing the names of the individual members of each local lodge and opposite the notation of whether or not the dues have been paid

Q How many of the paid members of the Railway Brotherhood have you got? How many paid members?

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828 ployee because so long as the local lodge does not suspend him, why, that is something that is entirely within their scope. There is in Mr. Walker's possession such a record as I have described there, being, generally speaking, a list showing the names of the individual members of each local lodge and opposite the notation of whether or not the dues have been paid

by that member. I know that Mr. Walker has such a record with him, here. I have no record of reports or rosters of any kind showing the membership of each separate organization, each separate lodge, on each separate division. All of these records called for would be in the possession of Mr. Walker. I regularly visit these lodges, different division headquarters. I do not determine from my visitations there who are members of that lodge, except just through talk with the division and local chairmen and local secretaries and officers of the lodges. Somebody tells me that so and so is lined up. That seems to be an old system board by-laws of our system board. I have a copy of something more recent than that. This paper entitled "By-laws, Brotherhood of Railway and Steamship Clerks" and so forth "System Board of Adjustment" is the only written or printed document controlling our local organization; that is the complete constitution and by-laws of our system board. This first document which you exhibited to me I am sure is superseded by the other documents which I handed you. This is an old one in 1919. I don't recall ever having seen this before. Yes, sir, this has been entirely superseded by that one.

829 (Defendants thereupon introduced the document in evidence, which is as follows:)

830 EXHIBIT R-6.

BY-LAWS.

Brotherhood of Railway and Steamship Clerks Freight Handlers Express and Station Employees.
System Board of Adjustment Southern Pacific Lines in Texas and Louisiana.
As Revised in San Antonio, Texas, January 21, 1923.

Membership of Board.

Section 1. Membership of the Board shall be composed of all Division Chairmen having jurisdiction as below:

El Paso Division No. 1—1 Member
Houston Division No. 2—1 Member
Victoria Division No. 3—1 Member
Houston Terminals)
Houston Mech & Stores) No. 4—1 Member
Austin Division No. 5—1 Member
Dallas Division No. 6—1 Member
Shreveport Division No. 7—1 Member
Beaumont-Galveston Divn. No. 8—1 Member
Lafayette Division No. 9—1 Member
New Orleans Terminals)
New Orleans Mec. & Stores) No. 10—1 Member

Section 2.

The Officers of the Board shall be a General Chairman, a General Secetary-Treasurer, and Three Vice General Chairmen, Designated as 1st, 2nd and 3rd Vice General Chairman, having jurisdiction as below:

831 Exhibit R-6 (continued).

District No. 1 (Div. 4-5-6) 1 Vice Genl. Chairman.
District No. 2 (Div. 8-9-10) 1 Vice Genl. Chairman
District No. 3 (Div. 1-2-3) 1 Vice Genl. Chairman.

Section 2½. There shall be an Executive Board Composed of the General Chairman and Vice General Chairman.

Section 3 The General Chairman and General Secretary-Treasurer may be elected from the membership at large, on the System, by the System Board.

Section 4. The Vice General Chairman shall be elected from the Division Chairmen (Members of the Board) in each District by the System Board.

Section 5. In case of vacancy in the office of General Chairman, from any cause, 1st Vice General Chairman shall automatically take over duties of General Chairman, under title of Acting General Chairman, until next meeting of the Board, whether regular or special meeting.

Section 6. In the case of vacancy in the office of General Secretary-Treasurer, the General Chairman shall appoint a member as Acting General Secretary-Treasurer, until next meeting of the Board, whether regular or special meeting.

Section 7. In case of vacancy in the office of any Vice General Chairman, those of lower rank shall automatically fill higher rank, the lowest rank being left vacant, which shall be filled by written ballot from members of the Board, mailed to the General Chairman.

Section 8. If a Vice General Chairman leaves the position of Division Chairman, he shall lose his rank as Vice General Chairman.

Section 9. Eliminated.

Section 10. All officers of the Board shall be elected triennially by the members of the Board and shall serve until their sucessors have duly qualified.

Meetings of the Board.

Section 11. When consistent, the regular meeting of the Board shall be on the 3rd Sunday of January and July of each year at such place designated by the General Chairman.

Section 12. Special meeting may be called at any time at the discretion of the General Chairman, or upon written request of any three members or more of the Board.

Section 13. A majority of the Board shall constitute a quorum for handling the business of the Board.

Section 14. At each regular meeting of the Board (or in the event of no regular meeting the first special meeting thereafter) the General Chairman shall appoint a committee of three, one of whom at least shall be a Vice General Chairman, who shall audit the records and accounts of the General Secretary-Tresurer and make a written report to the Board, furnishing all members of the Board with copy within 10 days.

The local Secretary of each Lodge having S. P. membership to be provided with a copy of same.

833 **Duties of Officers and Members of Board.**

Section 15. The General Chairman shall devote all his time to the business of the Board, which shall consist of upbuilding the Organization on the System, handling all grievances and claims with the higher officals of the Railroad, and with minor officers when necessary, visiting the Local Lodges when possible, negotiating agreements and giving prompt advice and instructions to all the membership on the S. P. Lines in Texas and Louisiana.

Section 16. The General Chairman shall furnish all officers and members of the Board with credentials in card form. The General Chairman shall also furnish the Division Chairmen with sufficient card credentials for all Local Representatives and Local Chairmen under their jurisdiction.

Section 17. The General Chairman shall have the authority to handle the individual claims and grievances and to a completion, with higher officers of the Railroad.

Section 18. The General Chairman in conjunction with the majority of the Vice General Chairmen shall have authority to handle general claims and grievances affecting the membership on the entire System.

Section 19. The General Secretary-Treasurer shall deposit all moneys received by him in a bank of
834 his choosing, subject to change by the Board.

Section 20. The General Secretary-Treasurer shall keep a true and accurate record of all money received and disbursed and shall submit statement of finances to members of the System Board at the close of each quarter and shall mail to each Local Secretary statement on July 1st, and January 1st, of all moneys received from the respective Lodges for comparison.

Section 21. The General Secretary-Treasurer shall be bonded to the Board to the amount of $2000.00, premium paid by the Board.

Section 22. All claims and grievances shall be made in writing to the Local Representative or Local Chairman of that particular office, department, or station, and handled by him for adjustment with officer in charge, such as Local Agent, etc. This shall not apply to General Office Clerks.

Section 23. If satisfactory adjustment not made by Local Representative or Local Chairman, all papers and information obtainable shall be passed to Division Chairman who has jurisdiction over the Division wherein claim or grievance arises, for his handling with Division Officials, such as Sup't. of Shops, Division Sup't. This shall not apply to General Office Clerks.

Section 24. If a satisfactory adjustment not made by Division Chairman, all papers and information
835 obtainable shall be passed to General Chairman for handling with General Officials, such as General Manager, etc., Grievances originating in the General Offices shall be handled by the General Chairman or other duly accredited representatives as may be chosen by the members, as provided for in Decision 119.

Section 25. Eliminated.

Salaries and Expenses.

Section 26. The General Chairman shall receive a salary of $3000.00 per year, payable semi-monthly, and in addition thereto shall be reimbursed for actual expenses incurred in his work,

Section 27. Eliminated.

Section 28. All other members of the Board shall receive for all time lost and actual expenses incident to their duties as members of the Board, all vouchers to be approved by the Vice General Chairman of that District.

Dues of Board and Collection of same.

Section 29. For purpose of defraying the expenses of the Board, each member on the System shall be assessed the sum of $1.00 monthly.

The Local Secretary Treasurer shall collect Board dues at the same time of collection of Local Lodge dues and shall remit the dues to the General Secretary-Treasurer promptly at the close of each months business, or within 15 days after expiration of the month in which collection made.

836

Section 30. All dues, whether in arrears, current or in advance, should be remitted promptly at the close of the months business segregated between months applicable to.

Section 31. The Local Lodge Secretaries shall furnish General Secretary-Treasurer with revised roster of membership on the first day of each quarter, with copy of additions and deductions each month.

Section 32. Those sections of the Protective Laws referring to System Boards of Adjustment shall automatically become a part of these By-Laws.

Section 33. All vouchers shall be approved by the General Chairman and one Vice General Chairman.

Section 34. Propositions for amendment to these By-Laws shall be submitted to the Board in writing and shall become effective after a two-thirds favorable vote of the Board.

Section 35. These By-Laws shall be effective January 21st, 1923, subject to the approval of the Grand President, and cancel and supersede all previous issues.

Section 36. The Order of Business shall be—

1. Taking up password,
2. Appointment of Credential Committee,
3. Report of Credential Committee,
4. Appointment of other Committees,
5. Roll call of officers and members,
6. Reports of officers,

837 7. Reading of minutes of last meeting.

8. Reading of communications and bills.

9. Unfinished business.

10. New business.

11. Election of Officers.

12. Good of the Brotherhood.

13. General Secretary-Treasurer's report.

14. Adjournment.

Note: Any action of the Grand Lodge altering these By-Laws shall have the effect of an amendment without any further action on the body adopting them. Any article or section of these By-Laws requiring temporary suspension for the purpose of acting upon a dispensation granted by the Grand Lodge or its properly authorized officers, shall be without further action of this body, considered temporarily suspended. All proposed amendments to these By-Laws, in conflict with the Grand Lodge Laws, are void and shall be declared out of order by the presiding officer.

(Signed) RALPH J. KING,
General Chairman, 1-24-21.

(Signed) W. P. HARPER,
Gen'l. Secy.-Treas. 1-24-21.

838 (Signed) E. H. FITZGERALD,
Grand President, 2-7-21.

(Revised 1-21-23)

The Witness:

This shows on the very last page that it was revised at San Antonio, Texas, January 21, 1923. In reference to what is the present actual paid up membership of those who are now paying dues in the Brotherhood on the Louisiana and Texas lines of the Southern Pacific, we will have to tell you frankly that our membership has been beaten down considerably and it is a matter of me just approximating it just from the knowledge under the conditions that I gave you a while ago. My best judgment is that we have perhaps 650 to 700 or 725 that are in good standing. "In good standing" means that they have not been suspended, that their insurance policies are effective and they are still considered members of the organization. Now, I would judge that all of them had paid their dues for January, 1928, because those that are behind at any particular time are made up, are off-set by those who were not paid up at some previous time. As a matter of fact I haven't any direct knowledge about that because the dues, Mr. Carter, are collected by the local lodges and so long as the local lodges make arrangements to carry them, why we don't have any knowledge of that. I have not examined and studied any record kept by Mr. Walker with the view of this very litigation, to determine our paid-up membership or to determine that fact for the purpose of this litigation.

839 It is a fact that on or about the 25th day of July, 1927, Governor Neff asked me for a list of our paid up membership. I told him that I would give it to him for his information, volunteered to give it to him for his information with the stipulation that he was not to give to Mr. Torian or Mr. Waid a statement as to who were members or who were not members of

the organization. I did not make the statement to him that I would have to consult with my counsel before I would answer that question or give him that information. I believe it is a fact that at the very time that Governor Neff was negotiating with me for the purpose of this wage increase or mediation here between the railroad company and ourselves, as of July 25th, that we were already in conference with attorneys preparing a bill to be filed in this suit here. I know, in fact, that we had. The suit was filed, I believe, July 29th. I am sure I was. I did not furnish that information to Governor Neff. I did not have an appointment with him later on in the afternoon of that same day that I was to see him and furnish it to him or advise him whether I would furnish it. I did not decline to furnish it to him. But I did not, in fact, ever furnish it to him. I don't recall that on the same day that Governor Neff asked me for that information that I made an appointment with Governor Neff to see him later in that day and give him an answer to it. My recollection is that Governor Neff phoned me at the hotel about 7 or 8 o'clock in the evening telling me that he was going home and asking me if the committee could not come over to his room. Those are the circumstances, as
840 I recall. I went to his room. I could not say whether I submitted to him any list of our membership either in number or in name. He asked me if I would furnish a list for the use of Mr. Torian and Mr. Waid, that is, it was by implication. He said "Will you give me a list where I can go over there and show these people where you have an actual bona fide paid up membership of so and so?" I told him that I would give it to him for his information but I would not give it to him for the information of Mr. Torian

and Mr. Waid. I want to qualify that. He asked if I would be willing to do it. He did not necessarily—I don't believe in fact that he did make the request on me direct to furnish him that information. I believe he asked me if I would be willing to do that. I could not tell you that my understanding was that he wanted that statement to be furnished to him so it could be furnished to the railroad company. I can't recall the conversation. I could not say how long before that day I had employed counsel in the case, but I think, I rather suspect it was along from the 10th to the 15th of July, just estimating it from the time the suit was completed. I have nothing else to base the estimate on. When I was conducting these negotiations through the mediation of Governor Neff I had at that time called on attorneys and had made arrangements to file this suit and had withdrawn our negotiations and had told the attorneys to hold the matter in abeyance. It was a different firm of attorneys to what we now have. When I left Governor Neff I did not go and consult any attorneys about whether we would furnish that list or not. I did not con-
841 sult any members of my organization about whether or not we would furnish a list or the number of the membership we had; we disposed of the matter in the conversation to which you referred, that we would furnish it for his information but that we would not for the information of these others. Governor Neff certainly must have understood at the end of that conversation that we declined to submit to Mr. Waid and Mr. Torian a list of our membership, and he must have just as certainly understood that we were willing to give it to him for his information. I could not tell you whether it was the 25th of July or the next day that we had the suit filed. Following the inquiry which

Governor Neff made of me to determine how many paid up memberships we then had: we had in the meantime spread or circulated this petition which was offered in evidence this morning, and we were taking the position that we would show our authorizations through that means rather than through memberships. I did not make any investigation immediately following the conversation with Governor Neff to ascertain how many paid-up memberships we had in the Brotherhood. I would just have to estimate the paid-up memberships, as usual. I believe that it was more then than it is now because of the fact that we were right under the gun in a wage dispute and these clerks were getting unionism like death and religion, they would come in when things were looking rigat. I would judge that we had from 700 to 750 at that time. I would judge that we now have fewer paid up memberships.

This question of this wage increase that was the subject of these conferences in June and July
842 of 1927, originated in November, 1925. With reference to whether up to November of 1925, we had had any election of any kind among the membership of the Brotherhood on the Southern Pacific Lines in Louisiana and Texas to determine whether or not they wanted an increase: We had a meeting of the system board in which I was specifically instructed to secure this increase and to begin those negotiations. We don't conduct it by having an election or vote of the membership of our Organization on that line. I deny having received any instructions from the Grand Lodge whatsoever to start this effort to obtain this increase. It is not true that the movement to obtain a wage increase for clerks originated with the National headquarters and that it applied to all railroads in the United States,

this particular movement that I'm speaking about now; I don't so understand it. But there was no collusion in bringing it about. I had perhaps called on the Grand Lodge for some information in regard to whether anybody else was going to bat at that particular time or not, prior to November 2, 1925, when we made this demand with reference to a wage increase, but so far as I recall I don't recall anything particular, any correspondence of a particular nature that I had with them. I don't recall having seen an Associated Press dispatch in the papers on September 26, 1925, under the headline from Cincinnati advising of a nation wide demand for increase of pay for clerks, which originated at that time from the National Brotherhood headquarters. I would not say that up to November 2, 1925, I had not had any notice or suggestion or demand or any-
843 thing of that kind from our National headquarters to put into effect a movement to secure a wage increase. I would say that possibly we had a letter saying that the movement was being instituted on a good many lines and that it might be well to make inquiry, or something of that sort; just merely a suggestion or a matter of information, containing no instruction whatsoever. I could not say that that was before we had our meeting of our division chairmen. With reference to whether or not this thought about this came into my mind through these suggestions from the headquarters man, I am going to answer that question by saying that our rates of pay are so far below the level that I have what amounts to practical instructions to resume negotiations at every opportunity which arises, to, if possible, bring our rates of pay up to the level paid by the railroads in the territory. Now, we don't need any suggestion from anybody. The men have directed the

system board officers to avail themselves of every opportunity and to just await a reasonable length of time after each settlement to again resume negotiations to the end that we can eventually bring our rates of pay up to the standard for this territory, so we don't need any suggestions. I told you that I had received no instructions whatsoever and so far as suggestions are concerned I couldn't say. Possibly I did. I of course could not say that that was before we had our meeting with our Division Chairmen because I don't know of any specific instance. With reference to whether or not there has been any election concerning increase of pay, by members
844 of the Brotherhood along the lines of the Southern Pacific System since I became Chairman or whether the matter has been put up to them to a vote of any kind since I have been Chairman: I have in my files, in my wage file, resolutions from perhaps all of the lodges urging the system board, in fact, requiring the system board—I tried to explain this morning how the thing was handled. The employees for instance, will instruct their division chairman and he in turn gives me my instructions. We don't decide these matters by popular or individual vote. It is decided by divisions. In cases where we initiate the movement, we present the matter to our division chairmen and they take it up with their membership, and then they vote on it and report back to me the result. In oher cases where the men take it up with the division chairmen and they in turn instruct us. They instruct them. That is a copy of the letter that I sent out to Mr. Torian, dated November 2, 1925. I believe Mr. Walker put that document or letter under date of November 4, 1925, out to the division chairmen and local chairmen and signed my name to it. If at that time we had had

the matter up with our Division Chairmen and had their sanction to make this demand, it was necessary for us to send out those letters because it is quite some little task to put over a $700,000. increase and we wanted the membership to know, like I referred to there, what a task there was ahead of the committee so that they might make due allowance. The reason that I addressed that letter to all division chairmen and local chairmen dated November 4th, when they had authorized me after advising with them, was because I sent them
845 copies of the things that I had done, the things that they had instructed me to do. They instructed me to do it and I wrote Mr. Torian a letter and I sent them a copy of the letter to show them one thing, that I had complied with their instructions. I believe Mr. Walker sent that out under my name. It has my approval now. I don't recall this letter of December 15th, addressed by me to all clerical employees. I have not identified it yet but I will. That is one of the letters that went out under my authorization.

Defendants thereupon introduced the following letters:

846 EXHIBIT R-7.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, System Board of Adjustment Southern Pacific Lines in Texas and Louisiana.

H. W. Harper, General Chairman,
211 Moore Building,
San Antonio, Texas.
Jno. W. Walker, Gen. Sec.-Treas.
211 Moore Building,
San Antonio, Texas.

San Antonio, Texas, November 2, 1925.

Request for increase in rates of pay—1925.
Mr. J. G. Torian,
Asst. to VP&GM,
Southern Pacific Lines,
Houston, Texas.

Dear Sir:

Employes, represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, are no less susceptible to the influences of American standards of living, than are other classes of employees in the railway industry. They are likewise affected by the cost of living in the same manner as are other railway employees. A survey of conditions indicates that employees of our class have not kept apace with the trend of American standards of living nor with other classes of railway employees in the matter of wages. It is, therefore, found to be necessary to serve thirty days notice of our desire to negotiate an increase in the rates of pay of the various employees as classified by sections in Decision No. 1986 of the United States Railroad Labor Board.

847 Exhibit R-7 (continued)

We are submitting below, by sections, the increases in rates of pay which, in our opinion, are just and reasonable under conditions past and present.

Sec. 1. Storekeepers, assistant storekeepers, chief clerks, foremen, sub-foremen, and other clerical supervisory forces ..... 10c per hour.

Sec. 2 (a) Clerks with an experience of two years or more in railroad clerical work, or clerical work of a similar nature in other industries, or where their cumulative experience in such clerical work is not less than two years ..... 10c per hour.

(b) Clerks with an experience of one year and less than two years in railroad clerical service, or clerical work of a similar nature in other industries, or where their cumulative experience in such clerical work is not less than one year ..... 10c per hour.

Sec. 3 (a) Clerks now in the service whose experience as above defined is less than one year ..... 10c per hour.

(b) Clerks without previous experience hereafter entering the service shall be paid at the rate of three dollars and fifteen cents ($3.15) per day for the first six months and three dollars and fifty five cents ($3.55) per day for the second six months.

Sec. 4. Train and engine crew callers, assistant station masters, train announcers, gatemen, and baggage and parcel room employees (other than clerks).....10c per hour.

848 Sec. 5. Janitors, elevator operators, office, or station and warehouse watchmen, and employees engaged in assorting waybills and tickets, operating appliances or machines for perforating, addressing envelopes, numbering claims, and other papers, gathering and distributing mail, adjusting dictaphone, cylinders, and other similar work ..... 10c per hour.

Sec. 6. Office boys, messengers, chore boys, and other employees under eighteen years of age filling similar positions, and station attendants .....10c per hour.

Sec. 7. Station, platform, warehouse, transfer, dock, pier, storeroom, stockroom, and teamtrack freight handlers or truckers, and others similarly employed .....10c per hour.

Sec. 8. The following differentials shall be maintained between truckers and the classes named below:

(a) Sealers, scalers, and fruit and perishable inspectors, one cent (1c) per hour above truckers' rates as established under section 7.

(b) Stowers or stevedores, callers or loaders, locators or coopers, two cents per hour above truckers' rates as established under section 7.

The above shall not operate to decrease any existing higher differentials.

Sec. 9. All common laborers in and around stations, storehouses and warehouses, not otherwise provided for .....10c per hour.

849 Section 10. Telephone switchboard operators .....10c per hour.

Section 11. For miscellaneous classes of foremen and other employees not specifically listed under any section ..... 10c per hour.

The employees desire to apply one half of the amounts requested as a straight increase in the current rates of pay, the other half to be distributed by joint action of the representatives of the carrier and of the employees in such manner as to bring about elimination of inequalities in rates of pay.

In the negotiations we shall undertake to justify the increases sought, by the factors set up by the Transportation Act, 1920, for consideration in the determination of what shall constitute just and reasonable wages, with particular regard, in this instance, to the relation between the wages of employees of our class and other classes of railway employees, and increases in the cost of living.

Will you kindly give consideration to our proposal and name a date upon which you can meet with our committee for the purpose of attempting satisfactory disposition of the question by agreement?

Yours truly,

H. W. HARPER,
General Chairman.

850 EXHIBIT R-8.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, System Board of Adjustment Southern Pacific Lines in Texas and Louisiana.

H. W. Harper, General Chairman,
211 Moore building,
San Antonio, Texas.
Jno. W. Walker, Gen. Sec.-Treas.
211 Moore building,
San Antonio, Texas.

Request for increase in rates of pay—1925.

San Antonio, Texas, November 4, 1925.

All Division Chairmen, Local Chairmen, & Secretaries,

Greetings:

The attached copy of my letter to Mr. Torian under date of November 2nd, on the above subject, is self- explanatory. But I want to ask the Secretaries that you read the letter at your next meeting, and I will also ask the Division and Local Chairmen, as well as others to whom this is sent in each office, that you pass around among the membership, that they may know something of the work that the committee has ahead of them.

And I want to take this opportunity to make a personal appeal to each member of this organization to exert every effort in your power to get that non-member in your office or department lined up as soon as possible. We want a 90 per cent organization on the entire system by January 1, 1926, and there is only one way it can be done,—every member do his part,—try to do something,—more than you have ever done before for the Brotherhood during the remainder of this year and your committee will be in a much better condition to do something for you in the handling of the many problems that they have before them.

851

We have obtained better wages, a shorter day and the right to some say in regards to our working conditions in about the same measure we have organized to force the issue. Industrial history of railroads is without record of more than personal and incidental grants of better wages and shorter hours, except where the employees, by and through their organized strength have been able to raise the standards.

Sincerely and fraternally,

H. W. HARPER,

General Chairman.

852 EXHIBIT R-9.

H. W. Harper, General Chairman,
210 Moore Building,
San Antonio, Texas
211 Moore Bldg.
Miss G. Dague, Gen. Sec.-Treas.
750 East Elmira St.
San Antonio, Texas.
Jno. W. Walker,
211 Moore Building.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, System Board of Adjustment Southern Pacific Lines in Texas and Louisiana.

San Antonio, Texas, December 15, 1925.

All Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

Greetings:

Employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, are no less susceptible to the influences of American standards of living, than are other classes of employees in the railway industry. They are likewise affected by the cost of living in the same manner as are other railway employees. Our failure to keep abreast with the trend of the times and with other classes is directly chargeable to our unwillingness, or failure to organize to the same degree of perfection as have the telegraphers, or train service employees, etc. It is a matter of common knowledge that the better organized crafts set the pace in the matter of improved wages and working conditions, and that the other classes follow in the order in which organized. Until organized

the railway clerks represented the caboose in the
853 train of progress in the railway industry.

Our organization on these lines dates from 1918, and it is a matter of record that we have not been entirely without success in advancing the welfare of employees of our class. There has been a wage movement, either upward or downward, in each year since 1918, and in each instance, it has been the duty of the Brotherhood of Railway Clerks to defend the interests of clerical employees. The year of 1925 is no exception, and we are now engaged in another attempt to tilt upward our scale of pay. There is enclosed herewith a questionnaire from the Grand President's office, which should be filled in by every employee who desires to be of assistance to us in securing an increase in rates of pay. The information sought will be very valuable in the negotiations, and every employe, whether a member or non-member, should give the matter prompt attention, and forward the desired information to us at your earliest convenience.

The System Board of Adjustment of the Brotherhood of Railway Clerks begins a new year with renewed determination to be of still greater service to every employee of our class on these Lines, to the end that our Brotherhood may take its rightful place in the forefront of the several legitimate railroad labor organizations. Our success will be in direct proportion to the amount of support afforded by the membership at large, and you can ill afford to hold back.

With best wishes to each individual employe for a Merry Christmas and a Happy New Year, and for a full measure of success to each of you during the coming year, I am

Yours fraternally,

854 H. W. HARPER,
Gen'l. Chairman.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Questionnaire.

To be answered by Clerks, Freight Handlers, and Station Employees of Railroads.

Name ..... Age ..... Title.....

Married or Single ..... Give number of dependents.....

Present rate of pay—Hourly $....Daily $.....

Monthly $.....

Are you a six or seven day employee? .....

How much average overtime do you earn monthly? $.....

By whom employed? ..... Railroad .....

Located at ..... Length of Railroad service.....

Street Address .....

Food $..... Clothing $..... Rent $.....

Cost of Living (by months) .....

Light and Fuel $.....

Doctor, Dentist, Drugs $..... Insurances $.....

Entertainments, Church & Charities $.....

Street car fare etc .....

Have you received any increase since October 16, 1923? ..... If so, how much, $..... and was it voluntary or secured by agreement negotiated by your system Board?

855 Important Notice.

You are also requested to return with this questionnaire a price list of staple food stuffs, secured from the merchant from whom you buy. Answer all questions

furnishing best information you have and return the questionnaire to your General Chairman from whom you received it. This information is needed in preparing our argument before the U. S. Railroad Labor Board for increase in wages. It is the duty of every one who receives it to handle it quickly.

E. H. FITZGERALD,
Grand President, Satistical and Research Department, #969 Transportation Building, Chicago, Illinois.

856 R-10.

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, System Board of Adjustment Southern Pacific Lines in Texas and Louisiana.

H. W. Harper, General Chairman,
211 Moore Building,
San Antonio, Texas.
Jno. W. Walker Gen. Sec.-Treas.
211 Moore Building,
San Antonio, Texas.

San Antonio, Texas, June 14, 1927.

All Clerical Employees.
Greeting:

There has been so much agitation, misrepresentation and solicitation on some of the Divisions among the clerical employees since United States Mediator Neff arrived in Houston and began, on June 2nd, negotiations between the Management and your Committee on wages, that the General Committee has found it necessary to

put out a questionnaire and to urge each and every clerk to immediately fill out and mail one of these forms to H. W. Harper, General Chairman, 211 Moore Bldg., San Antonio, Texas.

A sufficient supply of these forms are being forwarded to one clerk at all the larger stations, whose duty it will be to make a personal canvass and secure the signature.

857 At the smaller stations and other departments a questionnaire is being mailed to each individual employee with a self addressed envelope for its Quick Return.

This is important give it your immediate attention.

The Brotherhood Committee returned to Houston Sunday night to resume negotiations with Governor Neff, and we feel sure that we can justify and secure an increase in pay when it comes to a final show down. While the rumps are out in the highways and byways knocking the Brotherhood, the Brotherhood Committee will be in Houston trying to get you an increase.

Sincerely and fraternally,
H. W. HARPER,
General Chairman.

858 The Brotherhood of Railway Clerks, on the Southern Pacific-Pacific System, on April 16, 1927, secured an increase of five (5) cents per hour $10.20 per month, retroactive to January 1, 1927, with back pay to cover. The Brotherhood Committee on these Lines has a case, now being handled by the U. S. Board of Mediation, in which the employes request an increase of ten (10) cents per hour for all classes of employes represented by the Brotherhood. Our request is for a greater increase than was obtained on the Pacific System, but there is a complete justification for the ten cents we are asking as our rates have always

been more than five cents per hour below the rate paid on other railroads in the Southwestern territory, and the ten cents requested would no more than bring us up to the level on other roads.

The Brotherhood Committee has been meeting with former Governor Neff, who is the Government Mediator in our case, in daily conferences since June 2. The Management contends that our request is "unjust and inequitable," and that the employes themselves will not support the Brotherhood Committee in contending for ten cents per hour. In order to obtain the true sentiment of each and every employe in regard to this matter, it is requested that each employe (Both Members and Non-Members) fill out and sign the questionnaire below, and forward same, by return mail, to H. W. Harper, General Chairman, 211 Moore Bldg., San Antonio, Texas.

859

.....
Location. Date.

....
Title of your position. Rate. Office or department.

Do you think that we are entitled to an increase of as much as 10 cents per hour? .....

Would you be agreeable to a settlement for a sum of less than ten (10) cents per hour? .....

If so, what amount do you believe would be just and reasonable? .....

The above is an expression of my wishes in regard to the matter of an increase in pay, which is now being handled by the U. S. Board of Mediation, and I hereby authorize the Brotherhood of Railway Clerks to represent me upon the basis as outlined above.

(Signed) .....

19.

860 The Witness:

Referring to my analysis of the authorizations filed in Court by the Railway Clerks Association, this yellow sheet tabulation which we introduced in evidence here this morning, and the first item of names, duplications and duplicate signatures, showing five opposite that: It is not a fact that in our authorizations that we had duplications of 124; not in the authorizations which were originally filed here. We did not have any in those that I know of. Mr. Walker handled that. That is something you will have to ask him. Frankly, I don't recall a single duplication in that list of authorizations that I filed. Mr. Walker would know better as to that.

With reference to how I arrived at the conclusion in this analysis which I made that there were six persons listed as giving authorizations to the Association who were not then in the service: Mr. Stearns went over to the railroad company and went over the rolls with Mr. Nicholson, I believe, and he brought back a list of those whom he was unable to find on the payrolls. Now that is my recollection of it at this time. I believe I took the list of names that he could not find, that neither he nor Mr. Nicholson could find, and that I prepared that from Mr. Stearns' report. I don't think that we counted any of the freight truckers in our list. I think that we segregated those and cut them clear out. I don't believe that Mr. Walker included any of those. I could not tell you how many private branch exchange telephone operators we had in our list of authorizations. I suspect that we had some. Mr. Walker had those as I tell you. I could not

861 say. I do not know as a matter of fact that we had some private branch exchange operators on our list, authorizations. I suspect that

we did. If that class of employees was suitable to authorize us to act for them they were also suitable to authorize the Association. I would call them information clerks if I were going to classify them, but we can't take my classification. We have to take the company's classification. If they want to call them machine operators, why, they run the railroad, we don't. We can't classify them.

On Examination by the Court, he testified:

I think they ought to so classify them but the railroad does not do it. My impression is that they are information clerks, they would have to have a knowledge of what is going on, the time of arrival of trains and a lot of things that are really clerical in its nature.

On further Cross-Examination, he testified:

The next item, there were several of those Lake Charles & Northern Railroad Company employees that I objected to. I believe that that road was at that time leased and operated by the T&NO Railroad Company. I believe it had been taken over by lease at that time. Those have been proper clerical employees to be represented in this controversy all along in my opinion. And the reason I objected to them under this classification and analysis that I made was because Mr. Torian had declined to permit us to represent them on the ground that they were on a branch line and could not properly associate themselves. We contended with Mr.
862 Torian that they should be in and he would never permit it. I should think that was just before I became Chairman. They were under the S. P.,

they were under Mr. Watkins at New Orleans. They have been at all times proper clerks to be embraced in the list of authorizations supplied by the Association of Clerical Employees. You asked why I considered them improper. As I stated it was because of Mr. Torian's position and for your information Mr. Torian took the same position with either the firemen or enginemen in the cases now in the hands of the United States Board of Mediation, unless it has been withdrawn from the Board since I got my information. I take the position that it is wrong to be taken in to vote for the Association when Mr. Torian declined to allow them to be taken in to vote for the Brotherhood. I could not tell you how many Dining Car Department employees we had in our list of authorizations. I know that we had some authorizations from them. I do not know that we claimed them. We had authorizations from all of the dining car employees in New Orleans, which would be in the neighborhood of 10 or 12.

I don't know that we had any authorizations from messenger boys in our list of authorizations. We had authorizations from about 39 but I don't know that they were presented in the 1130 or not, in the original hearing. I have not performed any work as an employee or subordinate official of the Texas & New Orleans Railroad Company under pay since the time I was granted leave of absence to 1923. I have performed no service for them at all except to get them a passenger once in a while or something of that sort. I have been
863 subject to the Texas & New Orleans Railroad Company's continual authority to supervise and direct the manner of rendition of any service by me to it since I have been subject to the rules ordinarily applied to employees on leave of absence. I have been subject to

the Texas & New Orleans Railroad Company's authority to supervise and direct my work since my leave of absence; if they were to order me to return to service I would have to do it. I was not doing anything for the railroad company. I have not performed any work since that time for the railroad company nor have I been doing anything in which they had any power to direct or supervise my work; I have been on leave of absence from duty.

On Re-Direct Examination, he testified:

With reference to whether employees on leaves of absence are subject under the customs and usages in effect on the Texas & New Orleans Railroad Company to some degree of direction and discipline by the railroad company: I would be afraid to transgress any of the rules. I am subject to their discipline except that I was not doing any regular active duties right then.

With reference to the dining car service employees and the employees at the creosote plant which Mr. Carter asked about: I had written this letter to Mr. Torian a year ago, or some such matter, March 7, 1927, and this is his reply.

Complainant thereupon introduced in evidence the two letters identified by the witness:

864 EXHIBIT C-50.

San Antonio, Texas, March 7, 1927.

Seniority Rosters—1927.

Mr. J. G. Torian,
Ass't. to V. P. & G. M.,
Southern Pacific Lines,
Houston, Texas.

Dear Sir:

Under date of December 24, 1926, we requested the Superintendent of Dining Car Service, and the Superintendent of the Creosote Works at Houston to furnish us with copies of seniority rosters, when revised as of January 1, 1927, covering classes of employes in their respective departments coming within the scope of our agreement.

We have not been favored with a reply from either of those two departments, and it will be appreciated if you will secure copies of those rosters for us.

Yours truly,

(Signed) H. W. HARPER,
h General Chairman.

865 EXHIBIT C-51.

Morgan's Louisiana and Texas Railroad and Steamship Company,
Louisiana Western Railroad Company,
Iberia and Vermilion Railroad Company,
The Galveston, Harrisburg and San Antonio Railway Company,

Texas and New Orleans Railroad Company,
Houston and Texas Central Railroad Company,
The Houston East and West Texas Railway Company,
Houston and Shreveport Railroad Company,
Southern Pacific Terminal Company,
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines,

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines,

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, March 22, 1927.

Seniority Rosters as of date January 1, 1927.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
211 Moore Bldg.,
San Antonio, Texas.

Dear Sir:

Your leter March 7th.

The forces in the two offices mentioned (Manager of Dining Car Service and Superintendent of Wood Preserving Plant) are not covered by the seniority districts set up in the schedule.

Yours truly,

(Signed) J. G. TORIAN,
5-8. Ass't to V. P. & G. M.

866 The Witness:

John C. Moulin is cashier at New Orleans. He has been regularly employed as clerical employee for the defendant railroad company for perhaps 15 years and is still cashier in the New Orleans local office.

I know Stotzer, who testified by affidavit by agreement of the parties. He has been in the service of the company as a clerical employee about eight years, I believe, continuously.

Ordinarily hospital fees are deducted from the payroll of each ordinary employee. When they are on leave of absence and are not getting any pay, the company then takes care of it by billing the employee. I got regular bills twice a year for my hospital fees six months in advance; bills something similar to these that are rendered here to Walker. I paid those that way. My

policy with the Metropolitan Life Insurance Company for group insurance on the Southern Pacific Lines was similar to this form of Walker's policy.

Complainants thereupon introduced in evidence form of insurance policy, which was marked Exhibit C-52, and correspondence referred to concerning hospital bills, marked Exhibit C-53, which are, respectively, as follows:

Exhibit C-52

Metropolitan Life Insurance Company

SERIAL NO. 01542

THIS IS TO CERTIFY

THAT I NOW AM AND SUBJECT TO THE TERMS AND CONDITIONS OF GROUP POLICY NO. 20000G

JOE WILLIAM WALKER AN EMPLOYEE OF

SOUTHERN PACIFIC LINES
IN TEXAS AND LOUISIANA

IS INSURED FOR FIVE HUNDRED DOLLARS.

If death occur while the employee is in the employ of the employer, or prior to the next monthly premium due date of the Group Policy following the date of discontinuance of employment, the amount of insurance in force on said employee, in accordance with Group Policy as above said, will be paid to

PEGGY ANN WALKER Beneficiary.

The right to change the beneficiary is reserved.

No assignment by the employee of the insurance under the above Group Policy is valid.

PRIVILEGE OF CONTINUANCE

In the event of the termination of the employment for any reason whatsoever, the employee shall be entitled to have issued to him by the Metropolitan Life Insurance Company, without further evidence of insurability and upon application made to that Company within thirty days after such termination, and upon the payment of the premium applicable to the class of risk to which he belongs and to the form and amount of the Policy of his then attained age, a Policy of life insurance of any one of the forms customarily issued by such Company. Term Insurance excepted, in an amount equal to the amount of his protection under the Group Insurance Policy at the time of such termination.

METROPOLITAN LIFE INSURANCE COMPANY.

NEW YORK, JUNE 1 1925

Haley Fiske. PRESIDENT

FORM C707 G.P. CERTIFICATE
DEC. 1923
PRINTED IN U.S.A.

Subject to the Terms and Conditions expressed in

Policy No. 2000 Lf. Service No. 81542-A the amount of Insurance on the life of

JOHN WILLIAM WALKER

an employee of SOUTHERN PACIFIC LINES in Texas and Louisiana

has been increased ONE THOUSAND Dollars

METROPOLITAN LIFE INSURANCE COMPANY.

New York JULY 1, 1925

Harry Hicks.

President

Form G.L.I.N. R.P.T.L.

HOUSTON TEXAS. SAN ANTONIO G.P.A. S.P.L. 2017-68

868 EXHIBIT C-53.

San Antonio, Texas, November 13, 1925.
Hospital Dues and Privileges.

Dr. R. W. Knox,
Chief Surgeon,
Southern Pacific Hospital Ass'n,
Houston, Texas.

Dear Sir:

The undersigned is now employed as General Secretary-Treasurer of the Brotherhood of Railway Clerks, representing clerical and station employes on these lines.

I am an employe of the San Antonio Local Freight Office, on the Houston Division, under jurisdiction of Agent W. W. Read, off on indefinite leave of absence, and desire to make use of the company hospital facilities by the payment of a fee of $1.00 per month to the association.

Will you kindly handle this matter at your earliest convenience, advising how and when I shall make remittance to cover. Yours very truly,

The Hospital Association,
Southern Pacific Lines in Texas and Louisiana.

R. W. Knox, M. D.,
Chief Surgeon.

Houston, Texas, November 19th, 1925.

Mr. Jno. W. Walker,
Gen. Sec.-Treas. Brotherhood of Ry. & SS. Clerks,
211 Moore Bldg.,
869 San Antonio, Texas.

Dear Sir:

Your application of November 13th, for hospital benefits through our Association will be referred to our

Hospital Board at next meeting, after which I shall be very glad to advise you definitely their decision relative to same. Yours very truly,

(Signed) R. W. KNOX.

(Same Letter-head as preceding Letter.)

Houston, Texas, December 17th, 1925.

Mr. Jno. W. Walker,
Gen. Sec.-Treas. Brotherhood of Ry. & SS Clerks,
211 Moore Bldg.,
San Antonio, Texas.

Dear Sir:

Your application for hospital benefits through our Association has received the approval of our Hospital Board. These hospital benefits will be allowed you at our General Hospital Houston, and medical attention given on the Southern Pacific Lines at points where company surgeons are maintained by us. A contribution of $1.00 per month for Hospital Fund will be collected from you each month on the same basis as re-
870 quired from employees, viz: employees receiving $100.00 per month or more pay $1.00.

I wish also to explain that the Chairmen of the various Brotherhoods, who are members of our Hospital Association, are billed for these dues semi-annually in advance, that is at the beginning of the year dues are billed for covering the period of January through June, and another bill rendered in July to take care from that month through December. This method not only facilitates the handling of bills but was adopted at the suggestion of the Chairmen themselves.

Please advise if this will meet with your approval and we will arrange to bill you effective January, 1926.

Very truly yours,

(Signed) R. W. KNOX.

San Antonio, Texas, December 19, 1925.

Hospital Dues & Privileges.

Dr. R. W. Knox,
Chief Surgeon,
Southern Pacific Hospital Ass'n,
Houston, Texas.

Dear Sir:

This will acknowledge receipt and understanding of your letter of the 17th, advising that my application for hospital benefits has been approved by the Hospital Board.

The arrangement of billing representatives of the various organizations semi-annually in advance for this service is entirely satisfactory with me.

Thanking you for the courteous consideration
871 you have shown me in this matter, I am,

Yours very truly,

JWW.

Bill No. 6141.
Month's account, January, 1926.
Dept. No. 11.
Date made—January 22nd, 1926.

Mr. Jno. W. Walker,
Gen'l Secy. & Treas. B. of Ry. & SS. Clerks,
211 Moore Bldg., San Antonio, Texas.

To the Hospital Association of the Southern Pacific Lines, Dr.

(Make Remittance to Treasurer—The Hospital Association of the Southern Pacific Lines, Houston, Texas.)

Contribution to hospital fund for the months January thru June, 1926:

6 months at $1.00 per month $6.00

Distribution:
Credit Receipts:
Membership Dues—$6.00.
Paid Mar. 6, 1926.

O. M. LONGNECKER, Treas.,
(Signed) J. E. ECHOLS,
Ass't Cashier, Hosp. Ass'n.

Southern Pacific Lines.

Transmittal of Bills Collectible.

Houston, Texas, Jan. 27, 1926.

Mr. Jno. W. Walker, Gen'l Secy. & Treas.,
Brotherhood of R. R. & SS. Clerks,
211 Moore Bldg., San Antonio, Texas.

I enclose herewith the following bills:

Audit No.	For.	Amount.
Hosp. 6141	Contribution to Hospital Assn.	$6.00

Your prompt remittance will be appreciated.

872 Yours truly,

W. E. FITZGERALD,

(Signed) By Per C. A. HOODY.

B/c vs. Jno. W. Walker-Hosp. Ass'n. bill No. 6141—$6.00.

Texas and New Orleans Railroad Company,
The Galveston, Harrisburg and San Antonio Railway Company,
Southern Pacific Terminal Company,
The Direct Navigation Company.
Houston and Texas Central Railroad Company,
The Houston East and West Texas Railway Company,
Houston and Shreveport Railroad Company.

G. R. Cottingham, Auditor,
Jos. F. Elliot, Assistant Auditor,
W. J. Sauer, Auditor of Freight Accounts,
C. P. Coleman, Auditor of Passenger Accounts,
H. E. Buse, Auditor of Disbursements,
W. E. Fitzgerald, Auditor of Miscellaneous Accounts,
J. W. Comiskey, Auditor Equipment Service Accounts,

File Number 227-422-3301.

Houston, Texas, March 3rd, 1926.

Mr. Jno. W. Walker, Gen'l Sec'y. & Treas.,
Brotherhood of RR & SS Clerks,
211 Moore Bldg.,
San Antonio, Texas.

Dear Sir:

Under date of January 27th, I forwarded you Hospital Association Audit Bill No. 6141 in amount of $6.00, covering contribution to Hospital Association.

Please forward your check in settlement to our Treasurer, Mr. O. M. Longnecker, this city and oblige.

Yours truly,

873 (Signed) W. E. FITZGERALD.

San Antonio, Texas, March 4, 1926.

Mr. O. M. Longnecker,
Treasurer,
Southern Pacific Lines,
Houston, Texas.

Dear Sir:

I am enclosing herewith my personal check for $6.00 to cover Hospital Association Audit Bill No. 6141, for the months January through June, 1926.

Kindly credit and oblige,

Yours very truly,

CC: Mr. W. E. Fitzgerald.

Thank you for calling this to my attention as I had overlooked it.

J. W. W.

Mr. Jno. W. Walker,
Gen'l Secy. & Treas., B. of Ry. & SS. Clerks,
211 Moore Bldg.
San Antonio, Texas.

Bill No. 6513.
Month's account, July, 1926.
Dept. No. 119.

Date made, July 19, 1926.

To The Hospital Association of the Southern Pacific Lines, Dr.

(Make Remittance to Treasurer—The Hospital Association of the Southern Pacific Lines, Houston, Texas.)

For contribution to Hospital Fund for the months July through December, 1926:

874 6 months at $1.00 per month..... $6.00

Received Aug. 31, 1926. Acc't's Dept., S. P. Texas Lines.
Paid Sep. 1, 1926.

O. M. LONGNECKER,
Treas.
(Signed) J. E. ECHOLS,
Ass't. Cashier, The Hospital Association of

Distribution: Credit Receipts, Membership Dues, $6.00.

B/C vs. Jno. W. Walker—Hospital Acct. 6513—$6.00. Texas and New Orleans Railroad Company.

(Same Letterhead as Used on Other Letters of this Exhibit.)

File Number 227-422-3301.

Houston, Texas, August 21st, 1926.

Mr. John W. Walker,
Gen. Sec. & Treas., B. of Ry. and SS. Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Under date of July 21st, I forwarded you Hospital Association audit bill No. 6513, amount $6.00, covering contribution to hospital funds.

Please forward your check in settlement to our Treasurer, Mr. O. M. Longnecker, this City, at an early date, obliging,

Yours truly,
W. E. FITZGERALD,
Per OSWALD VENRIDS.

875 B/C vs. J. W. Walker—Hospital Ass'n Audit Bill 7167—$6.00.

Southern Pacific Lines in Texas and Louisiana.
Texas and New Orleans Railroad Company.

G. R. Cottingham, Auditor.
G. B. Herbert, Assistant Auditor.
Jos. F. Elliot, Assistant Auditor.
W. J. Sauer, Auditor of Freight Accounts.
C. P. Coleman, Auditor of Passenger Accounts.
H. E. Buse, Auditor of Disbursements.
W. E. FitzGerald, Auditor of Miscellaneous Accounts.
H. T. Beckway, Auditor of Equipment Service Accounts.

File Number 227-422-3301.

Houston, Texas, April 23, 1927.

Mr. John W. Walker,
Genl. Secy. & Treas., B. of Ry. & S. S. Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Attached is copy of above mentioned audit bill covering contribution to hospital fund for the months January through June, 1927, amount $6.00.

I will thank you to promptly forward your check in settlement to our Treasurer, Mr. O. M. Longnecker, this City, obliging,

Yours truly,
W. E. FITZGERALD,
Per W. L. P. (Signed)

San Antonio, Texas, April 30, 1927.

Mr. W. E. FitzGerald,
Auditor of Miscellaneous Accounts,
Houston, Texas.

Dear Sir:

This will acknowledge receipt of your letter
876 of the 23rd, together with hospital bill for the first half of this year, which is the first bill I have received for this period.

I was called on in an emergency and worked as Cashier at Edinburg from Feby. 7th to March 4th, and it's my understanding that hospital dues were deducted from my salary for the month of February; therefore I am enclosing herewith my check for $5.00 to cover the other five months. If this is not correct please advise.

Yours truly,

JWW.

Hospital Association.

Transmittal of Bills Collectible.

Houston, Texas, 6-28-1927.

Mr. Jno. W. Walker,
Genl. Secy. & Treas., B. of Ry. & SS. Clerks,
211 Moore Building,
San Antonio, Texas.

I enclose herewith the following bills:

Audit No.	For	Amount.
8532	Hospital Fund	

Your prompt remittance will be appreciated.
Per J. (Signed)

877 B/C versus Jno. W. Walker—Hospital Assn. Audit Bill 8532—$6.00.

Southern Pacific Lines.

(Same Letterhead as Used on Other Letters of This Exhibit—Form 260.)

File Number 227-422-3300.

Houston, Texas, July 29, 1927.

Mr. Jno. W. Walker, Gen. Sec. & Treas.,
Brotherhood of Ry. & Steamship Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Under date of June 28th I forwarded you above mentioned audit bill covering Hospital Fund.

Please forward your check in settlement to our Treasurer, Mr. O. M. Longnecker, this City, at an early date, obliging,

Yours truly,
W. E. FITZERALD,
Per C. B. UDELL.

B/C vs. Jno. W. Walker—Hospital Assn. Aud. Bill 8532—$6.00.

Southern Pacific Lines.

(Same Letterhead as Used on Other Letters of This Exhibit Form 260.)

File Number 227-422-3300.

Houston, Texas, August 24, 1927.

878 Mr. Jno. W. Walker, Gen. Sec. & Treas.,
Brotherhood of Ry. & Steamship Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Under date of July 29th, I called your attention to above mentioned audit bill, covering hospital fund.

This bill is now past due and I will thank you to forward your check in settlement to our Treasurer, Mr. O. M. Longnecker, this City, or advise your reasons for withholding payment.

Yours truly,
W. E. FITZGERALD,
Per W. L. P. (Signed)

(Indorsements on letter): $6.00. Paid by check. 8/27/27.

879 Mr. Jno. W. Walker, Gen. Sec. & Treas.,
Brotherhood of Ry. & Steamship Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Under date of July 29th, I called your attention to above mentioned audit bill, covering hospital fund.

This bill is now past due and I will thank you to forward your check in settlement to our Treasurer, Mr. O. M. Longnecker, this City, or advise your reasons for withholding payment.

Yours truly,
W. E. FITZGERALD,
Per W. L. P. (Signed)

(Indorsements on letter): $6.00. Paid by check. 8/27/27.

880 Upon further Cross-Examination, the witness testified:

I am familiar with Rule 807; it has been some time since I read it. I was familiar with that rule before.

Defendants thereupon introduced in evidence Rule 807:

"Rule 807. Garnishment or abandonment of wages will be considered sufficient cause for dismissal. The institution of any suit or legal proceeding against the company, or any act of hostility or wilful disregard of its interests by an employee, will immediately terminate the employment without further notice."

Complainants thereupon introduced in evidence the following letters:

EXHIBIT C-54.

August 30, 1925.

Mr. W. W. Reed, Agent,
Southern Pacific Lines,
San Antonio, Texas.

Dear Sir:

In line with the attached letter from General Chairman, H. W. Harper, to Mr. Torian, advising him of my election as a member of the General Committee, I would appreciate it if you will grant me an indefinite leave of absence in order that there will be no question as to my status when I find it necessary to again report for duty.

Thanking you for your attention in this matter, I am,

Yours very truly,

JWW.

881 EXHIBIT C-55.

Southern Pacific Lines.

1—Leave of Absence.

San Antonio, Texas, Sept. 9th, 1925.

Mr. Jno. W. Walker,
211 Moore Building,
City.

Dear Sir:

Having reference to yours August 30th, advising of your election as a member of the General Committee, B. of R. C., and requesting indefinite leave of absence,

beg to say I am authorized by our Superintendent, Mr. Mims, to grant you this leave as requested and as authorized under Rule 28 of the Clerks' agreement.

Yours truly,
(Signed) W. W. READ,
Agent.

Complainants next introduced in evidence the following letters:

882 EXHIBIT C-56.

San Antonio, Texas, April 9, 1926.

Mr. J. G. Torian,
Ass't to V. P. & G. M.,
Southern Pacific Lines,
Houston, Texas.

Dear Sir:

Will you kindly furnish me with the following transportation:

Houston to Nacogdoches via HE&WT.
Nacogdoches to Dallas via T&NO.
Dallas to San Antonio via H&TC—GH&SA.

Thanking you for your attention in the matter, I am,

Yours very truly,
(Signed) J. W. WALKER.

JWW.

883 EXHIBIT C-56—(Continued.)

Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.

The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Trip Passes.

Houston, Texas, April 12, 1926.

Mr. Jno. W. Walker,
Genl. Sec.-Treas., B. of R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

As requested in your letter of April 9th, I enclose herewith trip passes as follows:

No. B-49736, Houston to Nacogdoches.
No. B-49737, Nacogdoches to Dallas.
No. B-49738, Dallas to San Antonio.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

884 San Antonio, Texas, April 28, 1926.

Mr. J. G. Torian,
Ass't. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me the following transportation:

San Antonio to Dallas and return.
Houston to Hearne and return.
Houston to Jacksonville and return.

Thanking you for this courtesy and your attention in the matter, I am,

Yours very truly,
W (Signed) J. W. WALKER.

885 Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, May 1st, 1926.

Request for Transportation.

Mr. J. W. Walker,
Gen. Sec.-Treas., B. of R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Your letter April 28th.

As requested enclose herewith transportation as follows:

San Antonio to Dallas and return.
Houston to Hearne and return.
Houston to Jacksonville and return.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

886 San Antonio, Texas, June 16, 1926.

Transportation.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me with the following trip passes:

San Antonio to Houston via Victoria.
Houston to Dallas via Beaumont.
Dallas to San Antonio.
Thanking you for this courtesy, I am,
Yours very truly,
(Signed) J. W. WALKER.

JWW.

887 Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Transportation.

Houston, Texas, June 17, 1926.

Mr. Jno. W. Walker,
Sec.-Treasurer, B. of R. C.,
211 Moore Bldg.,
San Antonio, Texas.

Dear Sir:

Complying with your request of the 16th inst., enclose herewith trip passes as follows:

San Antonio to Houston via Victoria.
Houston to Dallas via Beaumont.
Dallas to San Antonio.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

888 San Antonio, Texas, June 25, 1926.

Transportation.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me a trip pass, San Antonio to Del Rio via Eagle Pass and return?

Thanking you for the courtesy, I am,

Yours very truly,
(Signed) J. W. WALKER.

JWW.

889 Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.

The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, June 30, 1926.

Transportation.

Mr. Jno. W. Walker,
Gen. Secty.-Treas., B. of R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

Your letter June 25th.

As requested am enclosing herewith trip pass in your favor from San Antonio to Del Rio and return.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

890 (On Same Kind of Southern Pacific Letterhead.)

Houston, Texas, August 26, 1926.

Transportation Requested.

Mr. John W. Walker, Gen. Sec.,-Treas.,
Brotherhood of Railway Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

As requested in yours of the 23rd inst., enclose herewith trip pass B-23970 in your favor from Houston to New Orleans and return.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

San Antonio, Texas, September 28th, 1926.

Transportation.

Mr. J. G. Torian,
Ass't. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me with round trip pass San Antonio to Denison? Thanking you for this courtesy, I am,

J. W. W.

891 (On Same Kind of Southern Pacific Letterhead.)

Houston, Texas, September 30, 1926.

Transportation Requested.

Mr. John W. Walker, Gen. Sec.-Treas.,
Brotherhood of Railway Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

As requested in your letter of September 28th, I enclose herewith trip pass No. B 28130 in your favor from San Antonio to Denison and return.

Our rules covering the handling of transportation provide that the employee in whose favor the pass is issued will sign their name on the back of the pass in space provided immediately upon receipt of the pass. Will you kindly handle accordingly and oblige.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

San Antonio, Texas, November 22, 1926.

Transportation.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me with the follow-
892 ing trip passes:

San Antonio to Houston via Victoria and return.
San Antonio to Corpus Christi and return.

Thanking you for this courtesy, I am,
Yours very truly,

JWW.

(On Same Kind of Southern Pacific Letterhead.)

Houston, Texas, November 24, 1926.

Transportation Requested.

Mr. John W. Walker,
General Secretary-Treasurer,
Brotherhood of Railway Clerks,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

As requested in your letter of November 22nd, I enclose herewith trip passes as follows:

B-34416—San Antonio to Houston via Victoria and return.

B-34417—San Antonio to Corpus Christi and return.

Our rules covering the handling of transportation provide that the employee in whose favor the pass is issued will sign their name on the back of the pass in space provided immediately upon receipt of the pass. Will you kindly handle accordingly and oblige.

Yours truly,

893 (Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

San Antonio, Texas, December 1, 1926.

Transportation.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me trip pass as follows:

Houston to New Orleans and return.

If you will place this pass with the Depot Ticket Agent in Houston I will call there for it.

Thanking you for this courtesy, I am,

Yours very truly,

JWW.

Houston, Texas, December 2, 1926.

Transportation Requested.

Mr. Jno. W. Walker,
General Secretary-Treasurer,
Brotherhood of Railway Clerks,
San Antonio, Texas.

Dear Sir:

Your letter of December 1st. Have placed with Depot Ticket Agent, Houston, Southern Pacific trip pass B-35308 your favor Houston to New Orleans and return.

894

Yours truly,

(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

San Antonio, Texas, March 9th, 1927.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me round trip pass Houston to Beaumont, also round trip pass Houston to New Orleans?

Thanking you for this courtesy, I am,

Yours very truly,

Houston, Texas, March 12, 1927.

Trip Pass.

Mr. John W. Walker,
Gen. Sec.-Treas., B. of R. C.,
211 Moore Building,
San Antonio, Texas.

Dear Sir:

As requested in yours of the 9th inst., enclose herewith trip pass B-46725 Houston to Beaumont and Pass B-46726 Houston to New Orleans, issued in your favor.

Yours truly,
J. G. TORIAN,
Asst. to V. P. & G. M.

895 San Antonio, Texas, July 5th, 1927.

Transportation.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me the following trip passes:

San Antonio to Dallas and return,
Houston to Hearne and return,
Houston to Dallas and return via Beaumont and Jacksonville.

Thanking you for this courtesy, I am,
Yours very truly,

General Secy.-Treas.

(Indorsement on letter): Above passes were never furnished.

San Antonio, Texas, Aug. 15, 1927.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

Will you kindly furnish me the following round trip passes:

San Antonio to Dallas and return,
San Antonio to Corpus Christi and return.

Thanking you for this courtesy, I am,
Yours truly,
General Secy.-Treas.

896 JWW.

(Indorsement on letter): Above passes were never furnished.

897 EXHIBIT C-57.

Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.
The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, November 14, 1923.

Vacations, Sick Leave and Saturday Afternoon Service.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

During our discussion at meeting yesterday of Decision No. 1986 of the United States Railroad Labor Board, I advised that delay in replying to your letter of November 3rd on above matter was occasioned by my absence from headquarters.

I also stated that the questions of vacations, sick leave and Saturday afternoons off were definitely settled with the General Committee of the Brotherhood of Railway and Steamship Clerks in conferences held during the month of June, 1922. You will recall
898 that these questions were remanded by Decision No. 630 and when that decision was placed in effect on these Lines, agreement was reached that Prin-

ciple No. 12 of Decision No. 119 would govern, that is, for eight hours' pay, eight hours' work should be performed by the employees. In this connection, I desire to call your attention to the Memorandum signed by the Committee of the Organization of the Brotherhood of Railway and Steamship Clerks and myself under date of July 1, 1922, which in part reads as follows:

"It is understood and agreed that these rules are subject to the provision of the Transportation Act of 1920 and that same dispose of all questions remanded to the carriers and the employees by the United States Railroad Labor Board in Decision No. 630."

The foregoing understanding fully and finally disposed of claims for these privileges which in effect call for payment for service not rendered. In view of this final disposition of the matter, it is indeed regrettable to note the disposition on the part of the Organization to re-open these questions whenever a more favorable rule is made applicable to some other railroad. Such a disposition defeats the intent and purpose of the Transportation Act as it is obvious that there is no incentive for the carriers to reach an agreement with their employees if such agreements are to be made the subject of further dispute in any case where a more favorable rule than the rule adopted is placed in effect on some other railroad.

In order that the record may be kept straight,
899 wish to state that while we are recognizing your Organization under Decision No. 1971 of the United States Railroad Labor Board, we desire to again make mention of the fact that you do not represent the majority of the clerical employees employed outside of General Office on these lines. In the recent ballot, your

Organization secured a vote of only 37% of the employees involved and this is certainly minority representation and at our conference yesterday, I stated that the Management was going to request the spreading of another ballot, in order that the majority of the employees directly interested may definitely determine by what Organization or Association they desire to be represented and thereby put an end to the present state of uncertainty and unrest that exists. The carrier is faced with a protest from the Association of Clerical Employees against recognizing your Organization and substantial evidence has been submitted by the Association in support of such protest and I do not think that it is proper that any changes in existing rules or practices be negotiated until the question of representation is definitely settled, but at the same time I desire to make it entirely clear that the Management will deal with the representatives of the Brotherhood of Railway and Steamship Clerks in the handling of routine matters until such time as the pending dispute on representation is decided.

Yours truly,
(Signed) J. G. TORIAN,
Asst. to V. P. & G. M.

900 EXHIBIT C-58.

Morgan's Louisiana and Texas Railroad and Steamship Company.
Louisiana Western Railroad Company.
Iberia and Vermilion Railroad Company.
The Galveston, Harrisburg and San Antonio Railway Company.
Texas and New Orleans Railroad Company.
Houston and Texas Central Railroad Company.

The Houston, East and West Texas Railway Company.
Houston and Shreveport Railroad Company.
Southern Pacific Terminal Company.
The Direct Navigation Company.

G. S. Waid,
Vice-President & General Manager,
Texas Lines.

R. C. Watkins,
Vice-President & General Manager,
Louisiana Lines.

J. G. Torian,
Assistant to Vice-President & General Manager.

Houston, Texas, April 30, 1924.

Request of the Brotherhood of Railway and Steamship Clerks for Changes in Working Rules.

Mr. H. W. Harper,
General Chairman, B. of R. C.,
210 Moore Building,
San Antonio, Texas.

Dear Sir:

At the conference held April 25th and 26th for the purpose of considering changes that you ask for in the working rules that were placed in effect July 1, 1922, under Decision No. 630 of the United States Railroad Labor Board, it was pointed out to you, and it was admitted by yourself and the members of your Committee, that the various changes which you now propose were considered and disposed of when the present rules were placed in effect. This

was evidenced by the memorandum agreed to and signed by the respective members of the Committee of the Brotherhood of Railway and Steamship Clerks and by the Representative of the Management on July 1, 1922, the last sentence of which signed memorandum reads as follows:

"It is understood and agreed that these rules are subject to the provisions of the Transportation Act of 1920 and that the same dispose of all questions remanded to the carriers and the employees by the United States Railroad Labor Board in Decision No. 630."

The only reason that was advanced by your Committee at the conference to support the proposed changes in rules relative to overtime allowances, Sunday and Holiday Work, Saturday Afternoons, Vacations and Sick Leave, was that since agreement on these matters was reached July 1, 1922, the United States Railroad Labor Board has handed down more favorable rules in decisions that are applicable to some other lines of railroads.

In its Decision No. 630, the Labor Board remanded to the carriers and the employees the question of sick leave and vacation allowances and these questions were finally and definitely disposed of for these Lines by the Agreement reached on July 1, 1922. Prior to the period of Federal Control, there was no rule or practice in effect on these Lines granting to the employees, as a
902 right, pay for service not performed. I refer to absences on account of sickness and vacation periods. The Committee of your Organization appealed several of these cases to the United States Railroad Labor Board and the Board sustained the action of the

Company in declining to pay for service not performed. Your attention is called to Devisions Nos. 19, 692 and 694.

In the conference on the 24th and 26th, it was made clear that the Management desired to reach an agreement for the purpose of clearing up this dispute. You stated on behalf of your committee that you would be willing to make certain concessions with a view of closing this matter out and reaching an agreement locally. On account of other previous engagements, I was not able to personally take part in the conferences on the 25th and 26th inst., and I am, therefore, desirous of securing advice covering such modification as you desire to make in your original proposition, and will meet you in conference for a full discussion of the matter on Tuesday, May 6th.

Yours truly,
(Signed) J. G. TORIAN,
1-s Asst. to V. P. & G. M.

903 Complainants next introduced in evidence the following paragraph from letter written by J. C. McDanie to Ehlinger, Baker and Wade:

"Remittance for the dues collected (referring to the dues of the Association of Clerical Employees) will be made immediately after the first of this month. We have given our members permission to withhold payment until they are financially able to make the payment. However, I do not anticipate having any trouble in the collecting of the dues."

Defendants thereupon introduced the whole letter as follows:

EXHIBIT C-59.

Southern Pacific Lines.

Englewood Yards, 10-9-27.

Mr. F. C. Ehlinger,
General Chairman,
Houston, Texas.

Mr. A. G. Baker,
Vice-General Chairman,
Houston, Texas.

Mr. D. D. Wade,
Gen. Secretary-Treas.,
Houston, Texas.

Gentlemen:

A meeting was held at Englewood Yard Office, 2:45 P. M., September 26th, for the purpose of selecting the local officers of the Association of Clerical Employees. We had an attendance of about 65 and the officers were duly elected as follows:

L. C. Bostick, Chairman.
Mr. J. F. Pennington, Vice-Chairman.
904 Carl Blasingame, Secretary-Treasurer.
P. W. Young and E. G. Lengel, Grievance Committee.

It was agreed to hold a monthly meeting and the meeting will be held on the first Wednesday following the 16th of each month. We are approximately 100 per cent strong at Englewood and there is no doubt but what the few remaining numbers will sign up within the next two or three days.

Remittance for the dues collected will be made immediately after the first of this month. We have given our members permission to withhold payment until they are financially able to make the payment. However, I do not anticipate having any trouble in the collecting of the dues.

Will be glad to have an expression from you as to what headway you are making at other stations. With best wishes, I am,

Yours truly,
(Signed) J. C. McDANIEL.

Complainants next introduced in evidence carbon copy of the following letter:

EXHIBIT C-60.

Houston, Texas, September 20, 1927.

Mr. A. R. Graves, Asst. Cashier,
Galveston, Texas.

Dear Mr. Graves:

Mr. Derrington and myself will be in Galveston Monday afternoon, if nothing comes up in the mean-
905 time to prevent, and will be very glad to see all of the freight station forces that afternoon for the purpose of perfecting an organization at Galveston. I hope that as many of the employees as possible will have their application blanks already signed and ready to turn in, in order that we can proceed with as little delay as possible.

Should something interfere with our proposal of being with you, I will notify you either by telephone or wire.

(Signed) A. G. BAKER.

AGB-O.

Complainants next introduced the following letter:

906 EXHIBIT C-61.

Co. No. 15846—Clerks' Injunction Case.
Houston, Texas, February 29, 1928.

Personal.
Mr. C. R. Morrill, Supt., El Paso, Texas.
Mr. A. D. Mims, Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksch, Supt. Houston, Texas.
Mr. K. C. Marshall, Supt., Houston, Texas.
Mr. R. M. Glover, Supt., Lafayette, La.
Mr. J. H. Eddy, Acting Supt., New Orleans, La.
Mr. B. S. Hollimon, Supt., Ennis, Texas.
Mr. J. H. Walsh, Supt., Austin, Texas.
Mr. L. B. Wood, General Storekeeper, Houston, Texas.
Mr. Percy Hewett, Supt. Telegraph, Houston, Texas.
Mr. M. H. Bonner, Chief Special Agent, Houston, Texas.
Mr. J. T. Connor, Supt. TNO. Shops, Houston, Texas.
Mr. C. T. Davis, Supt. Creosote Works, Houston, Texas.
Mr. J. S. Netherwood, Asst. Supt., MP&E., Algiers, La.

Gentlemen:

Mr. Lusk sent to this office H. W. Harper's joint letter of February 21st, addressed to you asking for copy of current seniority list. The following reply was made to Mr. Lusk under date of February 23rd, copy of which was sent you:

"Your indorsement of even date on letter received from H. W. Harper in which he calls for copies
907 of seniority rosters.

"My letter of February 17th contained instructions that you do not deal with either the Association or the Brotherhood and that any communications

received from representatives of either the Association or the Brotherhood should be sent to this office and no other action taken on them. These instructions should be rigidly observed."

I assume that all of you fully understand that we will deal with neither the Association nor the organization in any matters involving our clerical employees until the litigation is finally over, as this was quite definitely stated in my letter of February 17th, 1928, addressed to you but in order to guard against any mishandling wish to repeat these instructions and ask that you acknowledge receipt and understanding.

Yours truly,
(Signed) J. G. TORIAN,
2-k Asst. to V. P. & G. M.

908 Complainants next introduced the following memorandum attached to letter from Mr. Torian to all of his superintendents, marked personal, of June 17, 1927, as follows:

"The employees who are canvassing the line in the interest of direct dealing with the management in opposition to the organization have a right to know the true facts and I think it would be well to furnish them with a copy of this letter."

Defendants thereupon introduced in evidence the letter to which the memorandum was attached, as follows:

EXHIBIT R-11.

Propaganda Being Circulated by General Committee of the Brotherhood of Railway Clerks.

Houston, Texas, June 17, 1927.

Personal.
Mr. C. R. Morrill, Supt., El Paso.
Mr. A. D. Mims, Supt., San Antonio.
Mr. C. B. Goodloe, Supt., Victoria.
Mr. H. J. Micksch, Supt., Houston.
Mr. E. A. O'Donnell, Supt., Houston.
Mr. R. M. Glover, Supt., Lafayette.
Mr. F. B. Torian, Supt., New Orleans.
Mr. B. S. Hollimon, Supt., Ennis.
Mr. J. H. Walsh, Supt., Austin.
Mr. L. B. Wood, Gen. Storekeeper, Houston.
Mr. J. T. Connor, Supt., T&NO. Shops, Houston.
Mr. J. S. Netherwood, Asst. Supt., MP&E, Algiers.

909 Gentlemen:

I enclose copy of a printed circular that is being circulated by the Organization of the Brotherhood of Railway Clerks, apparently for the purpose of misleading our clerical and station service employees, and creating a wrong impression in order to secure their signatures. The misleading character of the numerous circulars recently sent out by this organization is aptly illustrated by the second paragraph of the circular enclosed herewith, the evident purpose of which paragraph is to convey the impression that mediation proceedings on the wage request filed by the organization of the Brotherhood of Railway Clerks has been going on since June 2nd. This is entirely untrue. We have been meeting with a member of the United States Board of Mediation since June 3rd, but have handled only cases involving employees other than clerical employees. The case filed with the board by the Organization of the

Brotherhood of Railway and Steamship Clerks has not been reached in conference and has not been gone into with the member of the United States Board of Mediation. On request of the Mediator handling the negotiations here, conferences were postponed yesterday in order that he could attend the annual meeting of the Board which is to be held in Washington on June 27th.

The purpose of the misleading circulars referred to above is quite evident and you are at liberty to show this letter to any of our clerical employees who are interested in the matter.

Yours truly,

910 (Signed) J. G. TORIAN,
Ast. to V. P. & G. M.

Complainants next introduced similar memorandum from Mr. Torian attached to a letter of June 24th, marked personal, to all of his superintendents, as follows:

EXHIBIT C-63.

Memorandum.

In order that the employees may get a proper understanding of this matter, would suggest that you show the attached letter to the employees who are canvassing the line in the interest of direct dealing with the Management and in opposition to the propaganda of the Brotherhood of Railway Clerks' organization.

J. G. T.

Defendants thereupon introduced the letter to which the memorandum referred, as follows:

911 EXHIBIT R-12.

Propaganda Being Circulated by General Committee of Brotherhood of Railway Clerks.

Houston, Texas, June 24, 1927.

Personal.
Mr. C. R. Morrill, Supt., El Paso, Texas.
Mr. A. D. Mims, Supt., San Antonio, Texas.
Mr. G. B. Goodloe, Supt., Victoria, Texas.
Mr. H. J. Micksch, Supt., Houston, Texas.
Mr. E. A. O'Donnell, Supt., Houston, Texas.
Mr. R. M. Glover, Supt., Lafayette, La.
Mr. P. B. Torian, Supt., New Orleans, La.
Mr. B. S. Hollimon, Supt., Ennis, Texas.
Mr. J. H. Walsh, Supt., Austin, Texas.
Mr. L. B. Wood, Gen. Storekeeper, Houston, Texas.
Mr. J. T. Connor, Supt., T&NO. Shops, Houston, Texas.
Mr. J. S. Netherwood, Asst. Supt., MP&E, Algiers, La.

Gentlemen:

I enclose copy of circular letter issued June 18th, by General Chairman Harper of the Brotherhood of Railway Clerks, and copy of letter from Mediator Neff, which is referred to therein. The circulars and bulletins being sent out by this committee are of such an undignified and abusive character that they are beneath our notice, but a number of the statements made are intentionally misleading and if not corrected would create a wrong impression. The evident purpose of the circular of June 18th, that is enclosed herewith, is to create in the minds of our clerical and station
912 employees an impression that the demands of the Railway Clerks' Organization have been

taken up with us by Governor Neff, representing the United States Board of Mediation, and that mediation proceedings were begun and are under way. This is not true.

We met Governor Neff and were in conference for about twelve days, going into detailed discussion of two cases that involved other classes of employees and did not involve the clerks' organization. We did not complete the discussion of these two cases and the case of the Railway Clerks' Organization, which was third on the list, was not reached and was not taken up in conference, except that we advised the Mediator that when that case was reached in regular order we would take the position that the Organization of the Brotherhood of Railway Clerks did not have the authority of a majority of our employees to represent them.

Would advise further that I have had a communication from a member of the committee representing the clerical employees who desire to handle their affairs direct with the Management and I will meet that committee as soon as the organization of the committee has been completed.

Yours truly,
(Signed) J. G. TORIAN,
5-k Asst. to V. P & G. M.

913 Complainants next introduced in evidence the following letter:

EXHIBIT C-64.

The Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

El Paso, Texas, September 30, 1927.

Clerical Employees,
Southern Pacific Lines,
El Paso Division.

The Management of these Lines having recognized The Association of Clerical Employees as the Representatives of the Clerical Employees on the Southern Pacific Lines in Texas and Louisiana as directed under Rule 56, Section (a) of the rules promulgated by the Railroad Labor Board, we made request on the Management for a wage adjustment, which was granted and made effective August 16th, 1927.

We expect shortly to organize the Association for the El Paso Division, which will work and protect all of our interests in connection with this association.

You are advised that in the future all questions that may arise as to working conditions and wages, will be handled only through our Representative, that the former B. of R. C. is no more the recognized Committee. We should handle all disagreements and other matters of this kind through our own Association, as grievances submitted through the former General Chairman, Division Chairman or Committees of the B. of R. C. will not be recognized.

It is to be hoped that each and every em-
914 ployee coming under this Association will realize his loyalty and responsibility to the Company and will give his full support to this organization. Application blanks for membership will be forwarded to you shortly at which time we expect to receive a good percentage of our Clerks as members. Am attaching copies of following letters for your further information: Letter from Ass't. to V. P. & G. M., Mr. J. G. Torian, recognizing our Association as representatives

of Clerks employed on these Lines; copy of Memorandum of Agreement between Railroad Company and Association of Clerical Employees; letter from our General Secretary and Treasurer, Mr. D. D. Wade, and copy of by-laws of our association. Please arrange to post this in such manner that everyone concerned will have an opportunity to read.

We are assured of a good representation of all employees in the El Paso Office and we are hoping that each and every one will realize the importance of lining up with our Organization on the Line.

(Signed) DAVE HARPER,
Temporary Division Chairman. The Association of Clerical Employees.

915 Complainant rests.

DEFENDANT'S EVIDENCE IN CHIEF.

Defendant first introduced in evidence the following extracts from the Congressional Committee on Interstate Commerce, to which complainants objected. Overruled. Exception.

"Mr. Thom:

"This bill was introduced by Senator Watson on January 7th, 1926, 'to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes.'"

"I ought to say that when it was taken up then after Congress adjourned it was by representatives of the parties authorized to confer and to ascertain what could be worked out in the way of an adjustment and in ac-

cordance with the recommendation of the President that some method be found by the parties themselves of adjusting these labor disputes."

Then on page 10:

"A very important provision of the bill is found in one of its paragraphs which provides that nothing in the act shall be construed to prohibit an individual carrier and its employees from agreeing upon settlements of disputes through such machinery of contract and adjustment as they may mutually establish. That means that, notwithstanding the provisions of this bill, any carrier and its employees may agree among themselves as to other machinery, machinery not provided in the bill, for the adjustment of disputes between them."

"The Committee will observe that disputes between carriers and their employees are thus divided
916 into two classes, one relating to grievances and to the interpretation and application of existing agreements as to rates of pay, rules and working conditions. The other relating to changes in rates of pay, rules and working conditions. These two classes are dealt with differently in the bill. As to both there is a requirement that there shall be an effort to agree between the parties in conference."

From Page 11:

"If it relates to changes in rates of pay, rules, or working conditions, to new agreements with respect to these matters, as I say, that must be considered in the first instance in conference. Failing that it does not go to an adjustment board, but the duties of the board

of mediation in respect to it at once applies, as the duties of the Board of Mediation also apply to any dispute respecting grievances or the application of agreements not adjusted by the proper adjustment board and not adjusted in conference."

From Page 27:

"Senator Pittman:

"Let us see whether they were different or not. In the Howell-Barkley bill, as I understand it, the different crafts claimed the right to appoint representatives of their craft.

"Mr. Thom:

"Yes; the origin of the adjustment board is entirely different in the two bills.

917 "Senator Pittman:

"Their craft insisted that they had a right to appoint whoever they wanted to.

"Mr. Thom:

"No, the law said that they should have that right.

"Senator Pittman:

"I know the law says that they should have that right.

"Mr. Thom:

"I mean the bill says they should have that right. This bill does not say that.

"Senator Pittman:

"Well, I want to understand exactly whether this section means that or not. I will show you the section, and I want your interpretation of it, because it will depend very largely on that whether I vote for this bill. On page 4 in the third section, it reads as follows:

"'Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided on their corporate organization or unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other.'

"Mr. Thom:

"That gives perfect freedom of any class of employees to choose their representatives. The Howell-Barkley bill did not. It provided on its face how it should be done.

"Senator Pittman:

"Undoubtedly, but it attempted, did it not, to allow each craft, each member of the brotherhoods in case of a dispute among the conductors or brakemen or firemen, to be represented by those that they should select, instead of by others—

918 "Mr. Thom:

"It was to be done by named organizations in the Howell-Barkley bill." * * *

From page 30:

"Senator Pittman:

"May I ask another question, Mr. Thom?

"Mr. Thom:

"Yes.

"Senator Pittman:

"As I understand it, both sides of this have put in this bill every step looking to the adjustment of disputes and the prevention of the stoppage of transportation that can be put in it without bringing in the element of compulsion which none of us at the present time agree on.

"Mr. Thom:

"That is it exactly, Senator. In concluding this presentation, I would like to lay emphasis on one point: The basic value of this proposed legislation lies in its reliance upon the force of contract and not of external compulsion. It is a machinery to promote peace, not a manual of war. Prohibitive demands, fearsome penalties, and threatening gestures would be entirely out of place and inconsistent with the spirit of the proposed act. It is a measure to promote industrial harmony based on collective bargaining and is itself a product of agreement. Neither party is seeking a law to hamper enemies or to favor friends. Both are seeking public ratification and co-operation in our joint efforts to solve the problems of our industry so as to do justice to all private interests involved and to protect public interests."

From page 44 (continuing):

"The rancor, the disappointments, and dissatisfactions which usually follow in the wake of forced action or compulsion in any form will be removed by the provisions of this bill and offi-

919

cers and employees will be able to go about their daily tasks in a satisfied fashion if adjustments are made under the provisions of this proposed act. If for no other reason than it will preserve harmonious relations and tend to restore confidence, good will, and respect for each other this bill should be enacted into law.

"No industrial courts, compulsory arbitration, or forced investigation have ever proved successful and the framers of this bill had in mind that the moral obligations of the carriers and their employees would do more to assure the success of this kind of legislation than any form of obligation imposed by statute, consequently, it should be borne in mind that the real intention of the parties who have formulated this agreement which is now before you in this bill are willing to accept full responsibility therefor and to see that it is carried out in good faith. It insures industrial peace by right and not by force or might." * * *

From page 73:

"Senator Pittman:

"Does not this seem to be true, that there has been a theory of compulsion on the part of a great many people? Mr. Thom had it. Certainly Mr. Atterbury had it. A great many members of Congress had it. They tried minor compulsions. They realized that there was only one compulsion that would ever work, and that was the ultimate compulsion if they wanted to come to it. And have not these gentlemen, practically
920 all that appeared here, except you, abandoned this theory of the partial compulsion?"

From page 360:

"Mr. Kutz:

"I might answer that, Congressman Mapes, in this way: As I understand it, this act was supposedly to be free from compulsory terms, and it is largely then to follow that the fruits that will come out of this act will be those things that have been agreed upon in the conferences of the conferees. Obviously, then, if they agree to grant unopposedly the free right to the worker to have whatever organization he wants and to recognize that, then there would be no trouble as the result of the denial of that recognition, but in this language here as I read it, and as others have read it, they seem to think that the act on page 4 in paragraph 3, line 3, starting where it says:

" 'Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self organization or designation of representatives by the other.'

"Now, our labor conferees have stated in the record, and I accept their statement as their belief—they say this shall give any group, any organization, the right to be represented."

From page 365:

"Mr. Kutz:

"Congressmen, my thought, and that of my colleagues on that point is this: We appreciate the spirit of no compulsion is the one to be desired on every
921 hand, but in this connection I should say that wherever a great social problem like this is

presented, the right of the men to be free in industry is involved, if we have one part of the industry, like the management, which is a big part, who are slow to recognize the public opinion on that question and withhold their part of the co-operative element in dealing with their workers, then I think Congress has the right not to establish a compulsion in the law, but to establish a grant to the workers, as it were, to be defined by a pronouncement in the law, you might call it, an obligation on the carrier, but I choose to call it a grant to the worker, which, backed up by public opinion, would assure his right to be a free man in the industry."

"Mr. Burtness:

"It occurs to me that such grant is in this bill, but that there is nothing of compulsion in it."

From page 369:

"Mr. Hawes:

"Well, that will make the matter more simple, then. The representatives of the employees and the representatives of employers say there is no compulsion in this act from start to finish."

Defendant next introduced in evidence the following excerpts from the House and Senate Journals:

From page 4584:

"Mr. Garrett of Tennessee:

"The gentleman says it is required that they shall get together. May I ask the gentleman how can that requirement be enforced?

922 "Mr. Newton of Minnesota:

"Of course where the boards of adjustment must be created by agreement it is possible for the parties to disagree and not to have an adjustment board; but it is our understanding from the hearings that the parties have agreed in the main upon a procedure whereby these boards will be established. Now, then, if one party to the dispute shows no indication whatever to carry out the terms and provisions of this act, there is a violation of a very important legal obligation that is laid down in the law, and that is enforcible in the Courts.

"Mr. Sproul of Kansas:

"Will the gentleman yield?

"Mr. Newton of Minnesota:

"Yes.

"Mr. Sproul of Kansas:

"Is it not a fact that every provision in the law is merely directory, without any provision or method of enforcement.

"Mr. Newton of Minnesota:

"Oh, no; the word 'shall' is used. Certain duties, both general and specific, are laid upon the parties. However, I do not want to mislead my friend.

"The whole theory of this bill, at least up to the emergency board, is co-operative, not compulsory. That is, there is no compulsion to do or not to do specific acts; but there are imposed upon the parties, in the interests of the public and the maintenance of uninterrupted service, certain duties."

Mr. Hawes said:

"The Committee knew this bill could not well be part voluntary and part compulsory. One theory had to run through it all so the amendments proposed by this gentleman were rejected by the Committee. All
923 compulsion is out of it, and the Committee is now in entire agreement excepting the construction to be placed on one section of the bill."

From the same record under date of March 1st:

"Hon. Andrew J. Kirk of Kentucky:

"The agreement between them (that is, between the railroads and the labor people) has cultimated in the introduction of this bill. The agreement was arrived at after careful consideration by the parties themselves. Under this bill no force is to be employed. No coercion or threats of violence resorted to and no penalties inflicted except the penalty imposed by a disappointed public in case either party fails to stand by the agreement and provisions of this bill. Such an agreement brought about in this way, whereby the parties at interest have agreed on the manner of adjustment, and have guaranteed to the public by their pledge of honor, that they will abide by the provisions of this bill and will keep and carry out its mandates. Neither party can cast it aside in the face of a trusting public and thereby break faith with the people of this nation who had faith in the sincerity of the parties to this agreement, and because of which gave them this law in the form they themselves dictated and requested."

From page 4600, on March 2nd:

"Mr. Barkley:

"The bill we have before us does what the Howell-Barkley bill did and what the present law requires; it makes it the duty of both sides to make every effort to agree upon the wages and working conditions. It puts upon the railroads and the employees the legal obligation to exert themselves in every reasonable way to arrive at an agreement over wages and working conditions. So the bill does what the present law does, what the Erdman act, what the Newlands act, and what the first law ever passed by Congress did—recognized the right of private agreements between the railroads of this country and their employees with respect to wages and conditions of labor. It provides that it shall be the duty of the railroads and their employees to settle their own disputes. Who does not want them to do that? Who desires to superimpose the right of the Government to interfere with the right of both sides to consult themselves in composing their differences? Who is there who would advocate seriously that it is a wise public policy for Congress to undertake to interject itself into the situation where it may make it more difficult for men to agree, rather than to make it more easy for men to agree. So we provide that it shall be their first duty to get together and settle their own disputes. We provide that it shall be their duty to set up adjustment boards, not to consider questions of wages, but disagreements over grievances, interpretation, discipline and other technicalities that arise from time to time in the work shop and out on the tracks in the operation of the roads. One of the difficulties of the present law has been that while it provided that the men and the roads should form these adjustment boards, for one

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reason and another they were never able to get together. One said it was the fault of the other and the other said it was the fault of the one. They could not reach an understanding about the creation of these adjustment boards, and therefore they were not created."

From page 4675, March 3rd:

"Hon. Edgar C. Ellis of Missouri:

"I favor the experiment here proposed. I realize that little, if anything, entirely new is contained in this scheme. The novelty consists in what has been left out of the scheme. In the three former efforts frequently referred to in this debate, there has been an unfortunate admixture of what pertains to voluntary processes with what belongs to compulsory processes in dealing with wage disputes. There is nothing whatever that savors of compulsion in this proposal. In that respect it is novel, and for that precise reason I think it worth trying."

On the same page he says:

"If the proposed amendment we are now considering is to have the slightest potency, it would interject the Interstate Commerce Commission as an unwelcome guest or a disconcerting ghost at every one of those tables."

From the Senate Journal of May 7th, Senator Cummins from Iowa says:

"The Newlands Act especially, I think, is a very valuable and helpful bit of legislation. The pending bill combines the Newlands Act with the duty charged upon

both sides to enter into voluntary conferences and to use every effort to settle their differences without either appealing to the Board of Mediation and Conciliation or to arbitration. I regard that as the great effective part of the legislation. I agree with the Senator from Indiana that we have reached the time when we must settle all such controversies as are referred to here, if possible peacefully, without any interference on the part of the Board of Mediation or Conciliation. We are encouraging that in the bill. I do not think it is very much better in that respect than the existing law. But it comes as the result of an agreement of concord between the railroads and their employees, and it brings with it a better and a higher and a nobler spirit than surrounds the present legislation, simply because one side or the other were opposed to substantially all the provisions of the present law. The railroads fought certain parts of the act as bitterly and as intensely as I have ever seen opposition appear in the Congress. On the other hand the employees were just as intensely opposed to certain parts of the act. But now they have come together and they are agreed upon this legislation, to which they both feel they could appeal to settle their disputes. I think that we ought to try the experiment. * * * This bill is just like the present law."

926

From Senate Journal of May 10th, page 8985:

"Mr. Reed:

"It is just as much the old machine as is the old Buick still an old Buick when you put a coat of paint on it and give it a different name. It is the same old Buick exactly. There is a machinery here that is without jurisdiction to enforce its orders.

"Mr. Watson:
"That is true.

"Mr. Reed:
"It depends entirely on the will of the two main parties to the controversy whether or not its decision shall be obeyed. We have here a case where, no matter how often we go around the barn, we come out of
927 the same hole we went in.

"Mr. Watson:
"It is true that there is no coercion in the bill."

Also the following from the third paragraph and the second section:

"Mr. Robinson of Arkansas:
"At the present time there is no law that I can conceive of by which we can exert compulsion in the settlement of disputes between employers and employees and in the enforcement of the result of the settlement or trial of such dispute."

Complainant thereupon introduced the following excerpt on the same matter:

From page 26 of the hearings of the Senate Committee on Senate Bill 2306:

"Mr. Thom:
"These adjustment boards are entirely different from what they were under the Howell-Barkley bill.

"Senator Pittman:

"Let us see whether they were different or not. In the Howell-Barkley bill, as I understand it, the different crafts claimed the right to appoint representatives of their crafts.

"Mr. Thom:

"Yes; the origin of the adjustment board is entirely different in the two bills.

"Senator Pittman:

"Their crafts insisted that they had a right to appoint whoever they wanted to.

"Mr. Thom:

"No, the law said they should have that right.

"Senator Pittman:

"I know the law said they should have that right.

928 "Mr. Thom:

I mean the bill said they should have that right. This bill does not say that.

"Senator Pittma-

"Well, I want to understand exactly whether this section means that or not. I will show you the section, and I want your interpretation of it, because it will depend very largely on that whether I vote for this bill. On page 4, in the third section, it reads as follows:

'Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or

unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other.'

"Mr. Thom:

"That gives perfect freedom of any class of employees to choose their representatives. The Howell-Barkley bill did not. It provided on its face how it should be done.

"Senator Pittman:

"Undoubtedly, but it attempted, did it not, to allow each craft, each member of the brotherhoods in case of a dispute among the conductors or brakemen or firemen, to be represented by those that they should select, instead of by others—

"Mr. Thom:

"It was to be done by named organizations in the Howell-Barkley bill.

"Senator Pittman:

"Well, this accomplishes much more?

"Mr. Thom:

"Here there is perfect freedom of either side to choose its own representatives without interference by the other.

929 "Senator Pittman:

"Well, this section is broader in that respect, is it not?

"Mr. Thom:

"Well, the other one was restrictive in the sense that it named the organization which should do it. This does not. But this leaves either party free to do it in ac-

cordance with their own methods without interference by the other. That is, in our opinion, a great distinction between the two bills.

"Senator Bruce:

"Well, Mr. Thom, the idea is, too, to get rid of what sometimes has happened, that is to say the selection of representatives of labor by the carriers themselves. That is to say, representatives that were not really genuine representatives of labor. There has been some complaint I know on that score.

"Mr. Thom:

"Yes."

From page 199 of the Senate hearings on the same bill or law

"Mr. Emery:

"And the second proposition is that I want to be sure that the bill provides that the parties shall not take steps that will nullify the action of the committee. In other words, that they shall not take steps that will nullify the action of the committee. In other words, they shall maintain the status quo during the period of this investigation. Those are the two main particulars. If you do not accomplish that, Mr. Chairman, you do not accomplish anything by this legislation.

"Senator Couzens:

"Just wherein does section 10 not maintain the status quo?

"Senator Fess:

"That is just what I was going to ask, Senator. Does not the bill contain that?

"Senator Couzens:
"I thought it did.

"Mr. Emery:
"It does not, in my opinion, lay on the parties a definite and unambiguous legal obligation to maintain the status quo. Now, we have tried in the discussion in the past to state what would—

"The Chairman (interposing):
"If this does not maintain the status quo, I would like to have your thought on it. (Reading):

"After the creation of such board and for 30 days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"Mr. Emery:
"Yes, but—
"The Chairman (interposing):
"Does not that maintain the status quo?

"Mr. Emery:
"'The conditions out of which the dispute arose.'

"Senator Couzens:
"What are the conditions out of which the dispute arose?

"Mr. Emery:
"The parties look squarely to the dispute before it gets to the committee; what we are looking to is the situation which confronts the committee when appointed.

For example, I will give you an illustration. Suppose that a dispute being unadjusted and the machinery provided having failed, a strike is called and the President undertakes to investigate the controversy through his committee. That strike is called for a day definite. That is exactly what occurred in 1916, preceding the Adamson Act.

931 "Senator Couzens:

"Do you understand the day set for the strike may be set before the 60 days has expired?

"Mr. Emery:

"Certainly. Suppose the President appoints his committee, the committee is appointed and begins its investigation, and a strike becomes effective?

"The Chairman:

"Mr. Richberg does not construe it that way.

"Senator Couzens:

"Neither do I.

"Mr. Emery:

"What?

"The Chairman:

"That a strike can be called during that time.

"Mr. Emery:

"But it has been called to occur during the time the President's committee is making its investigation. Will this proposal suspend that strike order?

"Senator Couzens:

"Is this not as plain as the English language could make it?

"Mr. Emery:

"Then I ask this question. Does it suspend it as a moral duty, or under the statute?

"Senator Couzens:

"It suspends it under the statute, as I understand it."

Now section 2 provides:

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption of commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

932 Now the next paragraph of that section says:

"All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively by the carriers and by the employees thereof interested in the dispute."

And the third one, the third paragraph of section 2, is the one under discussion here.

And the fourth paragraph provides:

"In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the railroad line of the carrier involved unless otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

933 The following portion of the 10th section provides:

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

Mr. Richberg says at page 12:

"Now, how are representatives to be chosen? Simply in accordance with the general principle, against which I believe no one will raise any contention, and that is

that representatives shall be designated by the respective parties 'in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other.' There, gentlemen, is what lies at the foundation of any bargain which the parties are going to be expected to keep. It must be made by those who are honest representatives of the parties making the agreement. A man may be bound to a bargain which is made by his chosen representative when he will refuse to be bound by a bargain which is written for him by some one whom he did not select."

Also on page 40:

"Mr. Fredericks:

"Now does this law up to the time where the mediation board is provided for require the doing of anything which you could not do without it?

934 "Mr. Richberg:

"Require otherwise?

"Mr. Fredericks:

"Yes.

"Mr. Richberg:

"I think it does; in other words, it requires both parties to make every reasonable effort to make and maintain agreements. It makes that a legal duty upon them.

"Mr. Fredericks:
"How is that enforced?

"Mr. Richberg:
"Well, that is a different question.

"Mr. Fredericks:
"I know it is. I am asking you as a different question.

"Mr. Richberg:
"Well, when you say to require—I do not want to say it compels in the sense of putting a legal force on them. We have avoided in the bill in any way setting up any penalty sections or sections for the invocation of any judicial authority, except in the enforcement of an arbitration award. The thought being this, that so far as this law stated duties imposed upon the parties by act of Congress, if they failed to live up to their duties, and there was any action which a Court could take consistent with the judicial powers and its limitations, to compel the enforcement of that duty as a legal obligation, it would be subject to enforcement. But the law for such enforcement or compulsion should be developed in the Courts, according to the old common law theory of letting the Courts develop the law after the obligations are clearly understood, rather than to write into the law a specific line of penalties and writs of enforcement.

"Now there are certain limitations upon
935 what I have said, because how far the Court, for example, can compel the parties to exert every reasonable effort, what that means, may be a question. But when the transportation act was under

consideration by the Supreme Court the Supreme Court said that very clearly there was no purpose by Congress in passing that act to have the labor board's orders enforced by judicial order.

"What we have sought here is not to enforce the orders of any Government tribunal, but to provide a basis upon which it may be possible to enforce legal obligations written by Congress. Now that would present a different question in a judicial proceeding. For example, it may well be that an effort on the part of any group of men of either party, representing either employer or employees, to set up barriers to the free operation of this law, would be in violation of the law, and it would be possible to obtain judicial power to enforce that.

"Mr. Fredericks:

"How?

"Mr. Richberg:

"It depends upon the particular manner in which the law might be violated.

"Mr. Fredericks:

"Can you suggest a violation and a remedy?

"Mr. Richberg:

"I can think, for example, of this situation. Suppose under the third paragraph of section 2 which provides that representatives shall be designated by the parties in such manner as may be provided, without interference, influence, or coercion exercised by either party over the self organization or designation of representa-
936 tives by the other, there should be any effort to influence or control the selection of repre-

sentatives. I think under those circumstances that any effort on the part of either the employer or the employee to control the operations of the organization of the other, to influence or control the selection of representatives, would amount to either an individual action or a combination of actions—I do not like the word 'conspiracy', but let us say for a moment 'conspiracy'—to violate this law, and the Courts have found remedies for enjoining concerted action and even individual action to violate the law."

From page 42:

"Mr. Richberg:

"I think the situation may be clarified if I will distinguish between conference and contract. Now, what this law provides for is for free conference, for free right of representation. But granting the free right of conference and representation does not insure those with whom conference is had that a contract will be made with them."

From page 43, Mr. Richberg says:

"All we are asking for and all we expect to obtain in this bill is the right of free choice."

From page 44:

"Mr. Fredericks:

"Just one more question in regard to this section second on page 7. If there is an agreement between the executives and the employees of the railroad, and that agreement requires that the employees shall be repre-

sented only by one of their own number, and
937 that agreement expires and the men decide that they will not renew that clause of the agreement, then the executives would be compelled to come under this section third over on page 4 and recognize the representative of free selection of the men.

"Mr. Richberg:
"Oh, yes; certainly.

"Mr. Fredericks:
"Now there is one other question that comes to my mind. It has to do with the status quo remaining.

"Mr. Richberg:
"On page 26; I think what you mean is in lines 7, 8, 9 and 10.

"Mr. Fredericks:
"Yes. 'After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.' Now what does that mean? —'in the conditions out of which the dispute arose.'

"Mr. Richberg:
"The thought was to include in the broadest way all the factors which contributed to what is commonly called the status quo. In other words, the conditions may depend upon the dispute, whether it is with regard to rules or with regard to wages.

"Mr. Fredericks:

"This phrase 'the conditions out of which the dispute arose' has nothing to do with the regulations between the parties which continue after the dispute arose? For instance, there could be a strike while the matter was under consideration?

"Mr. Richberg:

"No.

938 "Mr. Fredericks:

"No?

"Mr. Richberg:

"No; very clearly.

"Mr. Fredericks:

"Where is that prevented, that there could not be a strike while the matter was under consideration?

"Mr. Richberg:

"I should want to make this very clear, that the parties—of course I do not say there could not be a strike, because there is the possibility, of course, always, of the conditions being changed, for example, by the carrier, and relieving the employees of the responsibility for maintaining the conditions. In other words, I do not want to be too absolute in my statement. I said no, because the purpose of this is to preserve unchanged all the conditions involved in the controversy until there is full opportunity for a presidential investigation and a 30-day report. In other words, a full cooling time and opportunity to crystallize public opinion.

"Mr. Fredericks:

"Well, now, what compels that preservation of peace, you may say, while it is under consideration?

"Mr. Richberg:

"What compels it?

"Mr. Fredericks:

"Yes.

"Mr. Richberg:

"Well, again I hesitate, because if there is compulsion in the law—and we have hesitated very much about writing compulsion in the law—it may appear that there is pretty strong compulsion written in here, and I hesitate to emphasize it, on behalf of those whom I represent.

"Mr. Fredericks:

"We are seeking for light, Mr. Richberg, and you are familiar with this.

939 "Mr. Richberg:

"Yes; and I am seeking to give it to the fullest extent I can. I think with the law which is developed at the present time against conspiracies to interrupt interstate commerce, with legal obligations imposed upon the parties, that if either party arbitrarily took a step to change the conditions which were being the subject of presidential investigation during this period, that they would be subject to the strongest form of judicial compulsion to prevent any such action."

From page 81:

"Mr. Huddleston:

"Mr. Richberg, I am concerned about the rights of minorities under this bill, and would like to know how they are protected.

"Mr. Richberg:

"The rights of minority groups of employees?

"Mr. Huddleston:

"Yes. I have in mind—so that you may address yourself to that particular aspect of it—a certain railroad system which maintains what is called a 'system union' or 'company union'. It has no definite organization. Its officers are elected by distribution among the employees of ballots by the company, and these employees who use the ballots are assumed to join the union. They pay no dues; they have no meetings; they keep no records for themselves. Everything is in the hands of the company. The officials of this 'union' are paid by the company. Take that type of 'company' union. We will say that there is a minority of the employees
940 who do not participate in the balloting or who would not if they did not feel compelled to do so. How are they to be represented and what protection are they to be given?

"Mr. Richberg:

"As far as the bill is concerned, the actions of the railroad to which you refer are absolutely prohibited under this bill. A railroad could not distribute ballots to its employees and direct them to vote the ballot, and by so voting to join the association which the company would kindly maintain for them, without violating the provision here that representatives for the purposes of

this act shall be designated without interference, influence, or coercion exercised by either party over the organization or designation of representatives by the other. Now, as to whether a minority of the employees could obtain any hearing, I can only again refer to the provisions of the act, which is that conferences shall be held upon request when a dispute arises between representatives designated and authorized to confer, and the representatives shall be designated, as I have stated, without interference, influence, or coercion exercised by the other party."

From page 81:

"Now, I have stated that because I believe it is the theory we have sought to write in this bill, that the right of hearing, the right of conference, the right of free representation must be absolutely preserved."

From page 84:

941 "Mr. Huddleston:

"Now, referring to section 2 on page 3, it shall be the duty of all carriers, their officers, agents, and employees, to exert every reasonable effort to make and maintain agreements, etc. Do you agree that that also is unenforceable by judicial proceeding?

"Mr. Richberg:

"Not always. I think any action involving an arbitrary refusal to comply with that duty might be subject to judicial compulsion. I am sure it would work both ways.

"Mr. Huddleston:

"'To exert every reasonable effort.'

"Mr. Richberg:

"In other words, I think it would not be exerting a reasonable effort to make and maintain agreements, for a carrier or its appropriate officers to refuse to even meet a committee that sought to make an agreement.

"Mr. Huddleston:

"That is substantially the same provision as carried by section 301 of the Esch-Cummins Act.

"Mr. Richberg:

"I would like to question whether that can be called substantially the same, Mr. Huddleston, for this reason: The Esch-Cummins Act—that is, the transportation act—provides it shall be the duty of the carriers and the employees to exert every reasonable effort to avoid any interruption to the operation of the carrier. Now, that is exactly what we have tried to change here. In other words, that means it is their duty to do anything that they think is wise to preserve the service from being interrupted.

"Mr. Huddleston:

"Of course, that is broader than this language. I did not refer to that aspect of it, but merely
942 to the 'duty' aspect.

"Mr. Richberg:

"Well, with reference to the duty aspect, it was my impression that if anything in this transportation act was enforceable, it might be that duty, but in the cases

in which an effort was made to get a Court, to get the judicial power behind the act, in which I participated more or less, it seemed that that question was always lost in the question that the Court discussed and finally decided as to whether the orders of the labor board were enforceable, and I do not think we have gotten a clear-cut decision as to whether, for example, a combination of either carriers or employees to violate that duty was not a violation of law. I do not think we ever had that decision.

"Mr. Huddleston:

"That is just the point I was coming to. I wanted to ask you what the Courts have held with reference to that clause of the transportation act.

"Mr. Richberg:

"I do not think it has ever been squarely met and answered, because I have participated in practically all the cases involved in this transportation act in one form or another, and in one case I, in fact, did not go through it to the final participation in the Supreme Court, just because of the fact I did not believe we were going to get a decision that would give us light on that question. I do not think the Courts have held, even under the transportation act, that when Congress imposes the duty in the interests of the public that a party can go out and arbitrarily violate that duty just because Congress does not always fix a pen-
943 alty of fine or imprisonment. I do not think that is the law.

"Mr. Huddleston:

"I have held as to the Esch-Cummins Act the same opinion as you now express, but I was under the im-

pression, not having kept up with the decisions, that the Courts had held that section 301 could not be enforced by injunction or other Court proceeding.

"Mr. Richberg:

"I will give you an example, Mr. Huddleston, in the Pennsylvania clerks' and shopmen's cases, which went to the Supreme Court of the United States. Now there was very earnest effort made in behalf of those organizations in those cases to get the Court to pass on the question as to whether a duty was not imposed on a common carrier under the law which it had to fulfill, but as a matter of fact the presentation from the standpoint of the carrier was to the effect that the Labor Board had issued an order which they had refused to comply with, and the decision of the Court went off on the basis that any order of the Labor Board, whether interlocutory or final, was not compulsory, and, therefore, they would not enforce it, and I do not believe that the decision in that case or any other case has passed on the question that I think is presented by your statement, and I think is presented again in this law, as to whether, if Congress imposes the duty—and particularly, let me say, on a public service corporation—whether that duty can be deliberately and wilfully violated without permitting a Court to interfere and check such a violation of law.

"Mr. Huddleston:

"You think, then, that this section is enforceable?

944 "Mr. Richberg:

"I think that a duty imposed by law is enforceable by judicial power, yes. Of course, this is not a duty which could be enforced in a very absolute way, be-

cause it is a duty to exert every reasonable effort. In other words, all that could be enforced by the Court would be an order against an arbitrary refusal to even attempt to comply with that duty, but I believe that could be subject to judicial power."

Complainant next introduced the following from the hearings before the House Committee:

From page 91:

"Mr. Garber:

"Is there any direct provision wherein the parties agree that, pending the adjustment of their controversy, the continued operation of the railroads shall be maintained?

"Mr. Richberg:

"I would like to take these provisions one by one, in order to show their cumulative effect.

"Mr. Garber:

"All right.

"Mr. Richberg:

"In the first place, it is their duty to exert every reasonable effort—taking page 3—to settle all disputes, whether arising out of the abrogation of agreements or otherwise, in order to avoid any interruption to commerce. In other words, the legal obligation is imposed, and as I have previously stated, and I want to emphasize it, I believe that the deliberate violation of that legal obligation could be prevented by Court
945 compulsion."

From page 94:

"Mr. Richberg:

"I can only say in the most emphatic terms that I can only read language as I have been taught to read it, and my reading may be entirely wrong, but if we can write stronger language to prevent any change in the conditions, meaning relations of employment or anything of the sort, I do not know where you would find it. As I have said, we have not sought to write a prohibition upon one party; we have sought to place upon both parties the obligation to maintain the conditions unchanged, and that obligation I will say frankly, can certainly be enforced against any concerted move to change the conditions.

"Mr. Fredericks:

"Do you construe that then to mean that pending negotiations the employees' organization could not call a strike?

"Mr. Richberg:

"They could not carry out a strike. That is precisely what I construe it to mean, with the qualification I made yesterday, that there has not been a violation on the other side."

From page 119:

"Mr. Newton:

"Colonel Thom, in reference to section 10 it has been testified to here that the effect of that would be to prevent any strike until 30 days after the emergency board has made its report. In the event of a possible change in business conditions, involving what the railroad management might think would be the necessity for a decrease in wages, I take it that wages could
945-a not be reduced until after the emergency board had made its report and 30 days had elapsed.

"Mr. Thom:
"Yes."

From page 250:

"Mr. Emery:
"Well, Mr. Newton, it is obviously impossible for me to answer your question when I undertake to define what I mean by 'status quo', and you say you do not mean that. I say that these gentlemen neither of them will contend that there is any legal obligation to prevent an interruption of commerce by not taking a strike vote, not striking, not ordering a strike, or not permitting a strike which was ordered prior to the appointment of the President's investigating committee, from coming into existence. My contention is that that is the definite thing which must be done in order to prevent the interruption of commerce. That without a legal obligation not to do that, you are dependent on the good will of the parties, which may or may not operate.

"Mr. Mapes:
"May I interrupt there just long enough to ask Colonel Thom and Mr. Richberg if they subscribe to that statement?

"Mr. Richberg:
"I deny it in toto. It is just like all the other statements that have been made on that subject, it is complete misrepresentation of the language of the act and our purposes and our statements regarding it.

"Mr. Mapes:
"Is there a legal obligation not to strike?

"Mr. Richberg:

"I claim that this imposes a legal obligation on both parties to maintain the conditions and that
946 under those circumstances if the employees precipitate a strike during this investigation or for 30 days afterwards, they would be violating the obligations of this law, and that the only qualification I put on that in my opening statement was if the other side had changed the condition first.

"Mr. Mapes:

"Suppose, Mr. Richberg, that this law had been in effect at the time of the passage of the Adamson Act and suppose the railroad employees had voted to strike on a certain day and the board of mediation notified the President, under the provisions of this act, the day before the strike was called that the strike was pending or imminent and asked him to appoint and he did appoint this emergency board, would that have suspended the strike for 60 days?

"Mr. Richberg:

"That would make it, in my judgment, necessary for the parties concerned not to bring about any change of conditions which would, of course, result from the men walking out and leaving their employment or from the railroads discharging them.

"Mr. Mapes:

"But in such a case, could they be prevented from striking by a Court?

"Mr. Richberg:

"I tried to explain in my opening statement that I think the law as it is at present developed shows clearly that the Courts have power to enjoin the concerted

commission of an illegal act. If you make this a legal obligation and there is a concerted movement, a conspiracy to commit an illegal act, under the
947 present laws as I understand them being written in the Courts, as they have been written in the Courts and sustained, such a concerted movement can be enjoined.

"Mr. Mapes:

"Then you clearly do not agree with the statements of Mr. Emery?

"Mr. Richberg:

"I certainly do not. I think they are entirely unjustified.

"Mr. Mapes:

"I would like to ask Colonel Thom which interpretation he agrees with.

"Mr. Thom:

"My interpretation is that this language, the language of the pending bill, 'conditions out of which the controversy arose,' involve basically the relation of the parties, because, if they were not in the position of employer and employee, the controversy could not have arisen. So that those terms are broad enough to protect the conditions of employer and employee and service as they existed when the controversy arose.

"Mr Mapes:

"Would you say, under the statement of fact that I proposed to Mr. Richberg, that this bill, if enacted into law, would prevent a strike for 60 days?

"Mr. Thom:

"I think so."

From page 275:

"Mr. Hoch:

"I am trying to get at whether there is actually an ambiguity here or not. It strikes me now that to the ordinary lay mind at least there would not be any question, having disposed of your objection involved in paragraph 8, but what this paragraph is plainly in-
947-a tended to maintain the status quo, and that if during the period of investigation or within 30 days following the report any change were made with reference to the relation of the parties involved in the controversy, in the public mind it would be clear that there had been a refusal to obey the plain provision of that paragraph."

From page 278:

"Mr. Hoch:

"So far as I am concerned, I am willing to close that part of it right now with this comment: As I understand it, this language does plainly impose a legal obligation to maintain the status quo in all of its essential aspects, so that the public might be for a possible 60 days protected against an interruption of traffic."

Complainant next introduced the following proceedings in the House:

From page 4295 of the Congressional Record, February 25, 1926:

"Is it not a fact that every provision in the law is merely directory, without any provision or method of enforcement?

"Mr. Newton of Minnesota:

"Oh, no; the word 'shall' is used. Certain duties, both general and specific, are laid upon the parties. However, I do not want to mis-lead my friend.

"The whole theory of this bill, at least up to the emergency board, is co-operative, not compul-
948 sory. That is, there is no compulsion to do or not to do specific acts; but there are imposed upon the parties, in the interests of the public and the maintenance of uninterrupted service, certain duties. The violation by either party of these duties would call for appropriate action in the Courts of law and equity by the aggrieved party or the public.

"Mr. Sproul of Kansas:

"In what way? Where is there any such provision?

"Mr. Newton of Minnesota:

"Through the theory of the common law. The duties are laid down. The law for enforcement would be developed in the Courts after the obligations are made and understood.

"Mr. Garrett of Tennessee:

"Mr. Chairman, will the gentleman yield?

"Mr. Newton of Minnesota:

"Yes.

"Mr. Garrett of Tennessee:

"I am very greatly troubled in my own mind about this bill, and I want to arrive at the correct conclusion if I can. Does the gentleman mean that the matter to which we have just been referring can be enforced now by mandatory injunction?

"Mr. Newton of Minnesota:

"I mean that there are obligations imposed by this bill upon both carrier and employee; that these obligations can be enforced in the law and equity Courts just the same as other obligations and duties are enforceable in those Courts."

949 Defendant next introduced the following excerpts from the proceedings of the Senate Interstate Commerce Committee:

From page 11:

"Then arbitration is provided in the bill and all the machinery in respect to it is set out. That is not compulsory. The parties may arbitrate or they may not arbitrate, and it requires an agreement between them before they do arbitrate."

From page 12, on January 15th:

"Senator Bruce:

"The board of mediation may proffer its service, but it does not say whether the carrier or the workers may decline the proffer or not?

"Mr. Thom:
"Well, of course, there is no doubt about the fact that any offer of mediation can be thwarted by the refusal of the parties to accept the offer of the board to mediate.

"Senator Bruce:
"And that is true of arbitration too?

"Mr. Thom:
"The whole thing is optional. That is intended to be optional.

"The Chairman:
"There is no compulsory arbitration.

"Senator Bruce:
"There can be no compulsion so far as arbitration is concerned, of course, that would be unlawful.

"Senator Howell:
"But this bill is in effect, unless there is a mutual agreement between the parties, that another method shall be adopted?

"Mr. Thom:
"What is that, Senator?

"Senator Howell:
"This bill is in effect, unless there is a mutual agreement between the parties, that another method
950 shall be adopted?

"Mr. Thom:
"Yes.

"Senator Howell:
"So it is compulsory that far?

"Mr. Thom:
"I do not think the bill can be described as a compulsory bill. It was not intended to make it compulsory.

"Senator Bruce:
"I do not see the slightest element of compulsion in it anywhere.

"Mr. Thom:
"It is not intended to be a compulsory bill."

From page 30:

"Senator Pittman:
"As I understand it, both sides of this have put in this bill every step looking to the adjustment of disputes and the prevention of the stoppage of transportation that can be put in it without bringing in the element of compulsion which none of us at the present time agree on.

"Mr. Thom:
"That is it exactly, Senator."

From page 41:

"The basic value of this proposed legislation lies in its reliance upon the force of contract and not of external compulsion. It is a machinery to promote peace, not a manual of war. Prohibitive commands, fearsome penalties, and threatening gestures would be entirely out of place and inconsistent with the spirit of the proposed act. It is a measure to promote industrial harmony based on collective bargaining and itself a product of agreement. Neither party is seeking a law to hamper enemies or to favor friends. Both are seeking public ratification of and co-operation in our joint efforts to solve the problems of our industry
951 so as to do justice to all private interests involved and to protect public interests."

From page 44:

"No industrial Courts, compulsory arbitration, or forced investigation have ever proved successful and the framers of this bill had in mind that the moral obligations of the carriers and their employees would do more to assure the success of this kind of legislation than any form of obligation imposed by statute, consequently, it should be borne in mind that the real intention of the parties who have formulated this agreement which is now before you in this bill are willing to accept full responsibility therefor and to see that it is carried out in good faith. It assures industrial peace by right and not by force of might."

From page 73:

"Does it not seem to be true that there has been a theory of compulsion on the part of a great many people? Mr. Thom had it. Certainly Mr. Atterbury had it. A great many members of Congress had it. They tried

minor compulsions. They realized that there was only one compulsion that would ever work, and that was the ultimate compulsion if they wanted to come to it. And have not these gentlemen, practically all that appeared here, except you, abandoned this theory of partial compulsion."

952 JOHN W. WALKER, called as a witness for Defendant, and having been duly sworn, testified as follows:

Direct Examination.

I am General Secretary and Treasurer of the System Board of Adjustment of the Brotherhood for the Southern Pacific System in Texas and Louisiana. The records which I as General Secretary keep with regard to membership are such membership records as I have been able to compile from reports of the local lodges. We don't have a regular form of system board secretary's record. I have made a record showing the names of our members upon which reports come up from the local lodges giving the names of the members then in good standing and opposite their payment of dues. I have had that system of reports in effect since the first of January, 1927, and had it all during last year. The local lodges made monthly remittances on those forms monthly. I have one of the forms here.

Upon Examination by Complainant's Counsel, he testified:

Each one of the local lodges make a monthly report and remittance to me as Secretary of the whole system. They pay a per diem or per capita tax based upon the members in good standing in the several lodges, to me

as Secretary-Treasurer of their system. On the first of each month the local secretary of the local lodges are supposed to remit to the secretary of the system board such dues as he has collected for the previous month from the membership. Neither the amount of money nor the information it transmits to me indicates exactly how many members he has got in good stand-
953 ing and upon which he bases his report. He might not remit for all of his members for that month. I made up a pencil memorandum which I showed you at noon. I have got that. I have got on it the names of the different local lodges of our system, 14 in number. The 14 separate lodges comprise our whole system membership. The local number of the National Brotherhood is after each one. The number which I have out here which purports to be a number of members indicates the minimum number of members at that lodge as of January 1st of this year. I say the minimum number of members due to the fluctuation in membership. The New Orleans Secretary may have and may not have remitted to me money covering the dues of 149 members for the month of January. All of the 149 may not have paid dues in that particular month. They might have paid dues in the months previous. I got the 149 from the memorandum that I have.

Upon Examination by the Court, he testified:

With reference to why I say 149 instead of 110 or 189, or what not: local lodges from time to time report to the system board, the system board secretary, members as they take them in and members that they suspend, and I try to keep that, from those reports I try to keep as near accurate a list as I can. That is made up from

previous reports of members taken in and members suspended. I make up one of these forms I use throughout the year. I send that form to the secretary of the local lodges on the first of the month, and he is supposed to list on there all of the dues that he has collected from such members as he has collected them from
954 and returns it to me with such money as he has collected. I got the figure 149 from the reports of the local secretary.

On further Examination by Complainant's Counsel, he testified:

That is the report from the New Orleans lodge. That is for the entire year. In other words, I made this up on the first of January this year, and that to the best of my knowledge was all the members that New Orleans 155 had at that time. Now you might find here some that have been added. I don't believe there has been any added on this report. However, I will have to explain that this is my office copy. The original that was sent to New Orleans local lodge on March 1st has not been returned to me yet with the collections for that month. This will last throughout the year. I sent this to the man on January 1st at New Orleans, the local secretary, and there is a place here for each month in the year. The original report indicated how many had paid dues during the month of January but that is in the possession of the local secretary now. I used the original of this. It goes backwards and forwards. I sent it to him on the first of the month and he is supposed to get it back by the 10th, but they don't always do it. When I get it back on the 10th of February it shows which of those members have paid dues for

the month of February. I do not make any record of the total number from New Orleans who have paid dues for the month of February, I just maintain this record here.

On further Direct Examination, he testified:

The pencil memorandum which I made up from my records and which I gave you yesterday was
955 made up as of January 1st, 1928. According to that memorandum there were 643 members of the Brotherhood in these 14 lodges. When we went back to the original record to ascertain payment of dues, for instance, El Paso, shown on this pencil memorandum, we had 49 members for El Paso as of that date, January 1st, 1928, and we found that 15 had paid their dues during the last quarter in the El Paso lodge. Under the by-laws of our local lodges a man may be suspended when he is in arrears for his dues three months. He is subject to be suspended. He is in good standing until he is suspended. He is not automatically suspended under the rules that we get from the National Brotherhood, three months non-payment of dues does not automatically suspend him. For the last quarter of 1927 we have got only 15 members in El Paso that had paid their quarterly dues. In New Orleans from our original record we haven't got yet the number of members who have paid their dues for the last quarter of 1927. I could not say how many paid their dues for that quarter. I could not say how many members were in good standing at New Orleans on January 1, 1928. I don't know how many had paid their dues for the last three months. With reference to whether we consider a member in good standing who has not paid his dues: he is in good

standing until suspended by the local lodge. I don't know whether the local lodge had suspended these fellows who had not paid their dues, or not.

I made up a memorandum showing the amount of money which had been collected and from that I get an average which will show the number of paid members during the year. During the year 1927 there was paid in a total membership dues of $5504.00. Dividing that by 12 that would give us approximately 460 members. During the year 1927 we had an average of 460 members that were paying their dues regularly. I haven't the report from the Lake Charles lodge showing how many members in that lodge really paid their dues during the last quarter of 1927. Neither have I got it from Port Arthur. I have it from El Paso and Dallas,—while the memorandum shows 13 members in Dallas, for the last quarter of '27 I find that 7 paid their dues. I have got that for Houston. On this memorandum the membership in Houston was shown to be 110. 58 paid their dues for the last quarter of '27. The Southern Pacific, which is a general lodge, No. 913, shows 159 members; 81 paid their dues for the last quarter.

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If that list of 643 members could be checked against all of the lodges as we have checked it against those four, I think it would show more than half of the 643 had paid their dues for the entire last quarter. With reference to El Paso there were 15 against 49; Dallas, 7 against 13; in Southern Pacific No. 913, 81 against 159; in Houston 58 against 110. Those four are the only records that I have by which I can check the actual payment of dues during the last quarter of '27. If the others follow out the same proportion, it would show that perhaps only 350 members were actually paying out of the 643 during the last quarter of 1927.

I have the record for those four lodges showing what paid membership we had for the quarter
957 ending the 30th of June. I haven't but just those four. For the quarter ending the 30th of June, the following number of members had paid their dues, in El Paso lodge 37, in Houston lodge 46, in Southern Pacific No. 913, 87; in Dallas, 7. If the same ratio obtained throughout our other lodges, we had about three or four hundred paid members that were paying their dues regularly in June of 1927. That is, if we had the other original records here and they would reflect the same figures. It would show that we had, to be liberal, about 400 members that were paying their dues regularly in June, 1927.

With reference to the requirement of our constitution and by-laws with regard to dropping members for nonpayment of dues for three months: you may drop them. It is not mandatory. We do not usually drop them.

With reference to whether if a member does not pay dues and does not attend the lodge we just hold on to his empty name: why, there's various reasons why he don't pay dues. It is the duty of the local secretaries of the local lodges to collect the dues and get the delinquent members paid up. We keep constantly after them to get these dues paid up. I don't think I have in my records here any actual record of all these delinquencies for all these lodges during the year 1927. A clerk who has not paid his dues in three months is entitled to come in and vote for representatives or take a voice in the management of the local lodge. Unless they want to exclude him. It is within the power of the local lodge to exclude him after he is suspended.
958 I haven't got the by-laws of any local lodge here. I have not searched them lately to see

if there were in those by-laws any provisions by which a clerk is automatically suspended for non-payment of dues for three months. I don't agree with the statement of the witness yesterday that they were automatically dropped for three months, after three months for non-payment. Insofar as suspending for non-payment of dues, the by-laws of each local lodge are uniform. That by-law comes from the Grand Lodge constitution. It provides that they may be suspended. It is not mandatory or automatic. I think that part of the expenses of this particular litigation is coming from the Grand Lodge. I would not want to state that all of it is coming from the Grand Lodge. Mr. Harper could possibly give you definite information.

In response to this subpoena that was served on me, I have brought here all the records I have. I have some here and some there. I think I can designate them by some appropriate description. For the four lodges that I was questioned about, El Paso, Dallas, Houston and Southern Pacific lodge, I have what we term remittance forms, remittance of dues for the year 1927. In 1927 we were using a form that we made up in the office there in San Antonio that was composed of a list of the members of those lodges and I secured those members by getting it from the local secretary from time to time and adding to it as I would have them to do it to build up the membership just as completely as I could, and I have that form here for those four lodges named.

959 Now that form for 1927 was still in the hands of the local secretary, sent them on the first of this month to have entered therein such dues for 1927 as they collected for February, the month of February, and sent back to us.

Q. Now do you object to our seeing that record?

Complainant:

We are interposing the objection to the Court about the admissibility of it, I don't mind Mr. Walker answering the question but the attitude of Mr. Walker and Mr. Harper, and the attitude of the clerks, the attitude of the individual clerks, is that represented by my statement to the Court on yesterday, that they don't want their employer to have access to the information as to which of them, who of them do and who of them don't belong to this Railroad Brotherhood for the reasons indicated in my statement of yesterday.

The Court:

* * * I will sustain the objection to the inquiry that the names of the persons carried on the register are material in view of the fact that I hold that the membership in the organization is entirely immaterial. * * *

The Defendant:

Note our exception.

The Court:

I will sustain the plaintiff's objection on that point. If the plaintiff desires to withdraw his objection on that point, and let the evidence go in, of course I have no objection. Let me say further, if the defendants in view of that ruling wish to exclude the evidence as to how many he says he has, I think that they would be entitled to that action because if it comes in, they ought to be allowed to test out the truth of it.

The Defendant:

No, we are fairly well satisfied as to the proof as to membership, and I did not interrupt a while
960 ago, we think the membership is a very important factor in this case. * * *

Complainant:

Your Honor suggested there that they might be entitled to even withdraw that which had been in. Now, isn't this true, that under that testimony which they have elicited from Mr. Walker, it does abundantly appear that there were in June of last year, and there is now, less than half of the clerical employees, so that if the matter is as they say, they have now established everything that they could hope for, but wouldn't this rule have some application, your Honor, that the inquiry being collateral, and they making this man their witness for that purpose, I don't think they could ask him a question and then undertake to dispute him by some other and different matter which they brought up, I don't know whether that would have application or not. It might not have.

The Court:

Certainly, documents. I just don't want to get myself in the inconsistent position of overruling plaintiff's objection to a point and then sustaining it, and if the defendants wish me to rule consistently throughout, why I will sustain the plaintiff's objection to all of this evidence.

Mr. Wharton:

No, we are satisfied with that evidence, your Honor.

The Court:

I am just sustaining it now because while I still think it is collateral and immaterial, as I thought in the beginning because I thought where the plaintiffs have in addition to a legal objection interposed a personal objection which I don't want to overrule on a
961 matter which I think is material.

The Witness:

I have besides those I have just described, my cash book that I list my receipts in and my disbursements. In addition, from some of the lodges but not from all of them, they are not uniform in sending us this information because it is not obligatory upon them to send it to us but from some of them I have these documents which I will describe. I am talking about the El Paso lodge now, which we call M. R.-1, which is a copy of a report sent to the Grand Lodge of additions to membership, and I also have copies of what we call a quarterly report of the local lodges that's sent to the Grand Lodge, showing additions and deductions account of suspensions, transfers, withdrawals and things of that kind. I have some of those documents from all of the lodges possibly but not all of them. I have a report showing suspension of members from the El Paso lodge since this litigation began for failure to pay dues or for other reasons. I would have to tabulate them if you want them. Any particular period? I haven't a report since August 1st from El Paso showing suspensions. I haven't a list of suspensions from the El Paso lodge since August 1st.

I have some of the records, possibly from some of the other lodges which are similar to those of the El Paso lodge. I have all these records I have of each lodge there arranged in a case separate to itself. I have similar records for the El Paso lodge, the Southern Pacific Lodge, the Dallas lodge, Houston lodge, San Antonio lodge, and New Orleans lodge, the Yoakum
962 lodge, Galveston lodge, Fort Worth lodge, Waco lodge, Shreveport lodge, Beaumont lodge, Lake Charles lodge, Port Arthur lodge. Those folders and envelopes which I have laid out there contain all that

I have now in my record, all the records of the Brotherhood under my charge as secretary, with reference to each of those lodges, the names of which I have just given. From that record I made up the list that I exhibited here yesterday, a tabulated pencil statement as to the membership.

The Defendant:

Do I understand the ruling of the Court to be that we are not entitled to see those papers?

The Court:

On the ground that I don't think the matter inquired about is material. Not on the ground that it is private, but on the ground that if it is not material the Court ought not to admit it to be offered, that it is not material.

The Defendant:

We except.

The Court:

* * * I overruled the plaintiff's objection to it, because you all wanted it in, but when it comes to the point that the plaintiff adds to his objection that it is immaterial, that it is personally objectionable to them, I am not going to continue to overrule my view of the law just to let you have it. * * *

I also say that if it would put you in the position of having you to take what the plaintiff wanted to give you, I am perfectly willing for you to withdraw the offer and take a bill on the whole thing.

The Defendant:

Mr. Wharton has expressed my view about that, that is, that it is all right to leave the record like it
963 is. That is all.

On Examination by the Court, he testified:

I have been in the railroad service about twenty-four years. Always in the capacity of a clerk. Well, possibly I ought to qualify that: in years gone by I have been agent at stations. That has been since 1904. I think that to a certain extent I am familiar with the relations of the railroads and the employees, concerning the method of handling employment matters, not only in the line of clerks but in other branches, such as trainmen, engineers, conductors, of the railway service. I would say that rates of pay and wages and working conditions have been arranged by the men in the respective groups of the railway service by collective action through representatives so far as I know in the organized groups as long as I have been living. I never had and as far as I know, other persons in the railroad service have never gone to the management and made individual agreements about your rate of pay irrespective of other clerks and other persons involved. That has always been done by some kind of general agreement covering persons in the same class through a representative of the employees during the period of time that I have been in the service. I have been on the Southern Pacific Lines ten years. The same conditions prevail there. Perhaps at the time I went into the railroad service I did not know anything about the making of agreements with employees in the railway service by group action of that kind.

964 On further Direct Examination, he testified:

It is true that prior to the organization of the Clerks' Brotherhood in 1918, which was done during the period of Federal control, that clerks were employed individually and not by groups. It is true that any clerk up to that time who wanted an increase in pay sought it by individual solicitation from his superior officer, because they were not organized. Perhaps up until that time there were a number of other groups or classes of employees who were in the same attitude as the clerks, that is, there was no National organization or Brotherhood. The four railway organizations called the Big Four, the Brotherhood of Railroad Trainmen, the Brotherhood of Locomotive Firemen, the Engineers and the Conductors, were not the only organizations that I knew anything about prior to the time I entered the railroad service. There were other organizations, the Order of Railway Telegraphers,—speaking of the general railroad service, the Brotherhood of Railway Clerks has been in existence for quite some time. They were in existence; possibly not on the Southern Pacific, however. On other lines of the United States they were organized. I was in the "Sap" employ and came over to the Southern Pacific in 1925. That is in connection with my information with reference to the Southern Pacific Lines, the Texas and New Orleans lines now operating from El Paso to New Orleans. However, the Southern Pacific was joined with the "Sap" during Federal control and of course I knew something about the conditions that maintained at that time. I don't know what the conditions were prior to 1918 concerning clerical employees

965 taking up with the management or their superior officer, individually, any grievance or question of raise of pay or working conditions or

hours of service. As far as my testimony elicited by the Court in answer to questions, it has application to clerks in general. I don't know with reference to the Southern Pacific Clerks. When I say in general, I mean on other lines.

I claimed the right for my organization to exclusively represent the clerks from 1923 down to the time this suit was filed. Mr. Harper and I were elected by the divisional chairmen of the local Brotherhood. The chairman of each division was elected by the members in good standing. The local lodges elected local chairmen and the local chaimen, in turn, elected division chairmen, and the division chairmen elected the General Chairmen. No clerk on the entire system, unless he was a member of the lodge, could vote for a local chairman. If fifty clerks out of a total of 100 elected the divisional chairman and he elected me, only those 50 exercised their vote. The others may have. If they joined the Brotherhood. They could not exercise it only by joining the Brotherhood. They could not have any voice as long as they stayed outside of the Brotherhood, not any vote.

In my corporate organization, the plans provided for designation of representatives under the Railway Labor Act is just what I have described. Local members in good standing vote for a division chairman and the division chairmen get together and elect officers for the system. That is the plan of my organization for selecting representatives. Nobody that is outside of the lodge has any voice whatever in electing officers of the organization. Those officers of the organization are
966 the spokesmen. They are the representatives.

The only way that the Brotherhood deals with the railroad is through its officers. Mr. Harper, selected

in the way that I have described, is the sole spokesman of the Brotherhood, at the direction of the system board officers. The system board officers are elected only by the members of the Brotherhood that are in good standing.

On Cross-Examination, he testified:

I have belonged to the Brotherhood of Railway Clerks since October, 1918. I belonged to it previously in 1904 when I first went into clerical work. The same Brotherhood or labor organization has been organized and existing for a number of years. I could not say that it was what you might call organized on the Southern Pacific Lines all of that time, active and so on. I don't know of that.

On Examination by the Court, he testified:

I stated previously that I assumed the right to exclusively represent the clerks on the Southern Pacific Lines. And that I was an officer of the Brotherhood. Being that, that gave me a right to assume and the reason I said that I assumed that I represented the clerks on those lines was, because through individual indications of the clerks from time to time they wanted us to represent them. I had been active with the railways for the Clerks, we had a contract with the railroads to reppresent the clerks. (Referring to a contract entered into in 1922, with the Brotherhood signed by the witness, which is in evidence in this case.)

I was not here when they had the first controversy with the Association, which we have had the
967 testimony about. The only controversy I now at this time recall is the one that occurred last

summer. There was never any question raised with me by any of the clerks as to the fact that the Brotherhood was not the representative of the clerks. Neither was there any protest filed with me, nor complaint made to me by any of the clerks that I know of that they did not want me to represent them until this matter came up in 1927. Nohing occurred between the time Mr. Torian wrote the letter in 1922 until this matter in 1927, between me and any of the clerks, non-members of the Brotherhood, complaining that because they did not belong to the Brotherhood they were not being represented. Nothing of that kind was ever presented to me.

The questionnaire we put out last year is the only effort that has been made that I know of since I have been here to find out from the other clerks generally whether they wanted the Association or us to represent them. Neither my organization nor I have ever been invited to join with any joint ballot or arrangement by which the question can be ascertained as to whether the clerks want our organization or some other; not by the clerks we represent. With reference to whether there has been any request by the railroads or anyone made on us to have a ballot to determine that: possibly I got too fast there. The clerks themselves that we represent are perfectly willing to have a secret ballot at any time that it becomes necessary. There has been a request made by individual members from time to time to have a ballot. We have not refused to consider it.

968 I thought you were talking about whether or not the other organization, the Clerical Employees Association, had agreed or suggested or requested any kind of secret ballot of us. They have not as an organization. We had some individual clerks to suggest that. Our organization has not said to them, "no,

we represent you and we are not going to have any kind of a secret ballot of any kind." I never took the position that I was the sole representative and had the sole right to represent the clerks.

On further Cross-Examination, he testified:

With reference to whether the railroad company has ever refused to deal with the clerks, from the time I have been familiar with it, particularly from the secret ballot in 1923 up until July of 1925: they have recognized us and dealt with us and conferred with us from time to time as the representative of all the clerks up to some time in June or July of last year, about the time of the institution of this suit.

There never has been any contention made by the Brotherhood or any action taken by the Brotherhood in negotiations with the railroad company contending for pay, hours, working conditions, vacations, seniority rules, or any other matter, about which we were negotiating, that we were attempting to negotiate only for our members and not for the class of employees generally. Each and every negotiation entered into and each and every contract or arrangement or agreement, and those things generally, have been for and on behalf of the class of clerical employees rather than any part of them, distinguishing by membership or non-

969 membership.

On further Direct Examination, he testified:

The 400 members in good standing who selected their local representatives, who selected Harper and I, are the spokesmen for the 1800 employees on the line.

The protests and rumblings against the Brotherhood from time to time, and the one contest, from 1922 down, has been from the railroad company. It was called the Clerical Association.

H. W. HARPER, called as a witness by defendant, and having been previously sworn, testified as follows:

I heard you interrogate Mr. Walker, and I testified myself yesterday, with regard to the manner in which the "corporate organization" selects their representatives; the members of the Brotherhood themselves elect the local chairmen, the local chairmen elect a division chairman, and they in turn elect a General Chairman. The General Chairman is the spokesman for the men on the entire division, subject to the control of the system board. There's not a member of our lodge in good standing who can vote for the division chairmen. Nobody that is not a member of our lodge in good standing and a paying member, has got a right to a voice in electing representatives that shall speak for these clerks, but any outside clerk who is not a member, can of course, elect the Brotherhood, its officers, as has been done in this case. That is our absolute authority for us to represent them. I would not say "in that particular
970 matter." I took it that was in all. To be perfectly frank about it that was gotten for the personal information of Governor Neff so that he might know whether or not employees were willing to be represented and in fact wanted to be represented and authorized the committee to represent the clerks on these lines in the dispute in which Governor Neff was engaged at that time.

That is the last authorization we sought from the clerks—at which that was circulated. This written authorization, of which we filed copies here in Court, was the last vote of confidence we had from the membership.

Only members of the lodge can vote for representatives, such as Walker and I, or for the chairmen and division chairmen. The general matters between the Brotherhood and the Railway Company arising from time to time, are handled and have been handled, by Walker and I. The correspondence shown here from Mr. Torian going backwards and forwards showed that we have been the spokesmen selected by the members in good standing, in all general matters for all the clerks. And the secret ballot in 1923 and the written agreement of Mr. Torian that we would be accredited with authority until such time as the employees selected other representatives by secret ballot. So far as the actual Court or attorneys' fees are concerned, why, we have heretofore made arrangements with the Grand Lodge to take care of that.

I had not seen this telegram of protest to the United States Labor Board in 1921 by employees of Southern Pacific Lines in Texas and Louisiana. He was protesting under exactly the same conditions. I
971 don't know anything about the petition that accompanied that, whether accompanying it were the signatures of over a thousand clerks. I don't know whether a copy of that was sent to me by the Secretary of the Labor Board. I don't believe it. I never saw it. I had no opportunity to see it. I did not know of the telegram that you showed me. I don't believe I got a copy through our Grand President, Fitzgerald. I think Mr. Torian sent me a copy of a protest of some sort. Not a copy of that.

On Cross-Examination, he testified:

This secret ballot that has been testified to was taken in 1923. There we got a majority of the votes cast. Of general representation. It was in response to that and following that that Mr. Torian wrote the letter that he agreed for and on behalf of the company that the Brotherhood of Railway Clerks would continue to represent the clerks until another secret ballot might be taken. No other one has been taken. No other one has ever been suggested by the Railroad Company. When I suggested another, Mr. Torian and Mr. Waid declined to even discuss it with us, and Mr. Lull declined to go into it, definitely.

The Brotherhood of Railway Clerks is not incorporated. When I answered Mr. Wharton's question about "corporate organization" with reference to our organization, I just answered generally, either by corporate or unincorporate organization. I didn't mean to answer "through our corporate organization."

Defendant next introduced in evidence the identical authorizations introduced at the hearing in
972 November, with the report of the Deputy Clerk of the Court, Mr. Sexton, with respect thereto, and with the reply analyses of objections, it being understood that the analyses including affidavit of H. W. Harper submitted by the plaintiff shall go in at the same time as well as the authorizations offered by them at the hearing of the contempt proceedings and that defendants' analyses include affidavits and testimony of the witness Mat Nicholson with respect to these matters.

(All of these documents having been heretofore set forth in the bill of exceptions in the contempt matter, are all omitted here, but are specifically referred to and made a part of this bill of exception.)

Defendant next introduced into evidence 68 additional authorizations of clerical employees, (referred to by Mr. Ehlinger and some turned in from time to time subsequently), referred to herein and described in the testimony of the witness, F. C. Ehlinger.

973 Complainants thereupon introduced the additional authorizations secured by the Brotherhood, as follows:

(These authorizations, 84 in number, were marked Exhibit C-66, and the form of same having been heretofore set forth in the bill of exceptions in the contempt matter, are all omitted here, but are specifically referred to and made a part of this bill of exception.)

Defendant next introduced in evidence the minutes of meeting held in Houston, Texas, Monday, July 11, 1927, as part of the files produced by the witness Baker under subpoena duces tecum issued by plaintiff, which is as follows:

EXHIBIT R-13.

"Minutes of Meeting held at Houston, Texas, Monday, July 11, 1927, to Perfect Organization of the Clerical Employees' Association of the Southern Pacific Lines in Texas and Louisiana.

Meeting was called to order at 9:30 A. M. by Mr. F. C. Ehlinger, with the following representatives present:

L. T. Roemer, Victoria Division,
J. G. Fernon, New Orleans Terminals,
C. W. Derrington, Houston Terminals,

W. A. Hamlett, Jr., Austin Division,
H. J. Genard, Houston Division,
W. J. Ehrharat, Yoakum Shops & Stores,
W. C. Biddle, Houston General Stores,
A. G. Baker, Houston General Shops,
P. H. Lalanne, Lafayette Division,
Dave Harper, El Paso Division,
974 P. H. Young, Beaumont Division,
T. R. Nystrom, Beaumont Division,
W. H. Kolter, Beaumont Division,
D. D. Wade, Beaumont Division,
F. C. Ehlinger, Dallas Division,
J. C. McDaniel, Houston Terminals,
J. T. Scheumack, Victoria Division,
G. E. Garrett, Houston General Shops.

After meeting was called to order Mr. Ehlinger stated that he would entertain a motion for a Chairman to preside over the proceedings. Motion was made that Mr. Ehlinger act as Chairman of the meeting, which was duly seconded and he was unanimously elected. Mr. Ehlinger then stated that motions were in order for the election of a temporary secretary of the meeting and upon motion duly seconded Mr. A. G. Baker was nominated temporary secretary.

Chairman Ehlinger next explained the purpose of the meeting, briefly outlining just what the clerical employees might expect by forming an association of the nature that had been proposed and just what benefits they would derive from an association of this character. After a round table discussion of the success that each division had met with in signing up members for this association, the question of the adoption of the constitution and by-laws was then taken up. Mr. Baker had

drafted the constitution and by-laws of the Shop Craft Employes' association. Each article of the constitution and by-laws was read, thoroughly discussed and
975 voted on. Meeting adjourned at 12.00 noon for lunch, the Chairman stating that the afternoon session would begin at 1:00 P. M.

Meeting was called to order at 1:00 P. M. by Chairman Ehlinger and a further discussion entered into on the constitution and by-laws, which had not been finished during the morning session. The constitution and by-laws were finally approved and accepted. The Chairman then stated that the question of the election of the executive committee was in order, whereupon Mr. Baker made a brief talk outlining the activities of Mr. Ehlinger in connection with the Association and nominated him for General Chairman, to be elected in accordance with the by-laws just approved; there being no other nominations, Mr. Ehlinger was unanimously elected. Mr. Ehlinger then declared nominations in order for Vice General Chairman. Mr. Genard of the Houston Division was nominated by Mr. Baker, Mr. Baker of the Houston General Shops nominated by Mr. Derrington and Mr. Derrington of the Houston Terminals nominated by Mr. Genard. Ballots were passed to all representatives and Mr. Baker was elected on first ballot. Mr. Ehlinger next declared nominations in order for a General Secretary-Treasurer. Mr. D. D. Wade of the Beaumont Division was nominated by Mr. Nystrom, there being no further nominations, he was unanimously elected.

At this point the question arose as to whether it was desirable to have a full or part time General Chairman, talks being made by various representatives both for and in opposition to a full time General Chairman. After a

976 thorough discussion of the question, it was decided that none of the executive officers would be full time representatives for the present but that each one of the executive officers would act in the capacity to which they were elected and at the same time carry on the regular duties to which they are now assigned. The discussion was then shifted to question of compensation for the executive officers and it was decided that the General Chairman and General Secretary-Treasurer would each receive as compensation for services rendered $50.00 per month for allowance for any time lost and expenses while away from headquarters, and the Vice General Chairman would receive no compensation but would be recompensed for all personal expenses incurred and any time lost while away from his headquarters.

At this juncture, Mr. Ehlinger got in communication with Mr. Nicholson of Mr. Torian's office and requested permission to bring all representatives to his office for the purpose of advising him that the organization had been completed and the association was ready for business. Mr. Nicholson advised that he would be very glad to meet them and the meeting was adjourned at 4:20 P. M. and all representatives went direct to the office of Mr. J. G. Torian, Assistant to Vice President and General Manager and were received by Mr. Nicholson as Mr. Torian was out of the city. Mr. Nicholson congratulated the committee on what had been accomplished and assured all members of the friendly feeling of the Management and that they would be received in due course by Mr. Torian. After exchanging felicitations the committee withdrew and will again be called at such time as may be designated by Mr. Torian."

977 Defendant next introduced in evidence the following letter:

EXHIBIT R-14.

"Increase in Wages for Clerical Forces on S. P. Lines In Texas and Louisiana effective August 16, 1927.

Houston, Texas, September 8, 1927.

Personal.

Mr. A. J. Sherwood,
Division Accountant,
El Paso Division,
El Paso, Texas.

Dear Mr. Sherwood:

I wish to acknowledge yours of September 2nd regarding the recent increase in wages secured for clerical forces on these lines.

We, of course, have been indeed fortunate in securing what increases we have been able to get after having been in existence such a short period of time. There is no question in my mind but what our Association is the proper and only way of handling matters of this nature, and I am quite sure that we can accomplish a great deal of good along many lines, if we have the hearty support and co operation of the majority of our clerical forces. It is nothing but natural for anyone to feel more kind towards those that they are dealing with when they realize fully that there is no spirit of antagonism, or possibly an inward feeling of hate
978 existing between the parties involved. In other words, our Association does not intend to fight

against the company but instead intends to co-operate in every manner possible and to assist them in building up a friendly spirit between the management and employees and break down the old spirit which has existed while the affairs of the clerks were being handled by radicals.

I very much appreciate the view you have taken regarding the two positions in your bureau and only wish that we could have called in from every division those supervisors who are directly in charge of the work and secured from them valuable suggestions and assistance in making new rates. It is, of course, a very hard matter for four people to sit in an office and determine definitely the duties of every clerk on the railroad and attempt to make a rate accordingly. We have done the very best we could, and am sure that there is no one but feels that this is true. If we have made some errors in the various positions, they could no doubt be rectified. However, we must not lose sight of the fact that all positions of the same relative importance necessarily had to be compared. Similar positions on each division were lined up side by side and the various inequalities as they might have existed were eliminated to a great extent by the proper adjustment in their rates. To have increased the rates on the two positions you mentioned to the rates that you have suggested would have put them entirely out of line with corresponding positions on other divisions. We, of course, have no doubt incurred the ill feelings of some employees, as they probably
979 feel that they have been slighted, but it was not a case of individuals; strictly a case of positions. If, in our opinion the positions were of such a responsible nature that we felt an increase in pay was warranted, it was given. The rate of pay for the Trainmaster's Clerk at Del Rio was very high as compared with some positions on the other divisions and for this

reason, we could hardly consistently grant him an increase without giving an abnormal increase to similar positions in other places. We are not finished with our work and we hope to have another increase in pay to distribute at an early date in the future, at which time we will then be able to more nearly grant a flat increase in pay than was granted this time, as we will not be required to set aside such a large amount of our appropriation to equalize rates of pay.

I want you to fully realize that the general committee is cognizant of the moral support of the various supervisors and which is sincerely appreciated. We stand ready and willing at all times to give whatever assistance possible, and I presume that you people will very soon organize your division local and we will be doing business in the usual manner.

Any time that I can be of assistance to you in this or any other matter, do not hesitate to call upon me.

Yours truly,

AGB-O. Shop Accountant."

Defendant thereupon introduced in evidence the following excerpt of the constitution of the Grand Lodge of the Brotherhood of Railway and Steamship
980 Clerks, etc.:

"Constitution of the Grand Lodge.

Statutes for the Government of Lodges and Protective Laws of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

(B. of R. C.)

Revised and Amended at Kansas City, Mo., May, 1925, In effect on and after July 1, 1925."

"Preamble. * * * The Grand Lodge, possessing original and exclusive jurisdiction, is the source of all true and lawful authority of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and is the legislative and judicial head of the Brotherhood; is vested with full power and authority to enforce upon its membership a strict adherence to the laws and regulations as stipulated herein and which are hereby declared to be the Constitution of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees."

"Article 1. Section 1. The International Organization shall be known by the name of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes. Its principal office and headquarters shall be at Cincinnati, Ohio, U.
981 S. A.

"Article II, Sovereign Body. Section 1. The sovereign body of the Brotherhood shall be called the Grand Lodge and it shall have absolute and exclusive jurisdiction over all matters pertaining to the Brotherhood; it is the true and legitimate source of all authority, and the final resort of appeal, and there is no power vested in any officer, committee or body of members to repeal, alter, or change its laws and its decisions, except by referendum vote as hereinafter provided.

"Section 2. It shall establish lodges throughout the States, territories, provinces or countries of the United States, Canada and Mexico.

"Section 3. It shall establish a Ritual with written and unwritten work, and shall change, alter and amend the same when deemed necessary and provide for its security and the uniform dissemination of its teachings.

"Section 4. It shall print and furnish all Charters, Rituals, Cards and forms necessary to uniformity throughout the Brotherhood. It shall also print in French, Spanish or other languages necessary, a supply of Constitutions, Rituals, Petitions and Obligation Blanks, and other necessary forms.

"Section 5. It shall provide a revenue to meet its expenses by per capita tax on the membership, and by fees, dues and assessments and will furnish supplies, such as Constitutions, blank reports to be made to the Grand Lodge and application blanks for membership, free of charge to lodges.

"Section 6. The government of all lodges shall be vested in this Grand Lodge as the supreme head
982 of all such lodges under its jurisdiction. To it shall belong the authority to determine the customs and usages in regard to all matters relating to the Brotherhood.

"Article III. Section 1. The Grand Lodge shall be composed of Grand President, Grand Secretary-Treasurer, seven Vice Grand Presidents, which shall constitute the Grand Executive Council, and a Board of Trustees consisting of five members, the Editor of the Railway Clerk and National Legislative Counsel and Delegates as hereinafter provided, all of whom shall be entitled to a voice and vote on all matters coming before the sovereign body.

"Section 2. There shall be elected one Vice Grand President from the Express members, and one member of the Board of Trustees from the Express members, and one Vice Grand President and one member of the Board of Trustees from the Dominion of Canada. The balance of the Vice Grand Presidents and members of the Board of Trustees shall be elected from the membership at large.

"Section 3. Each Lodge of the Brotherhood, organized under a charter granted by the Grand Lodge, shall be entitled to representation on the following basis: One (1) delegate for each lodge with voting power of the entire membership. The number of members of a lodge shall be computed as those in good standing at the end of the quarter preceding the session of the Grand Lodge. Each lodge of one hundred (100) members or less shall be entitled to one (1) representative and one (1) vote at each Convention. The voting strength of lodges having more than one hundred (100) members shall be one (1) vote for each one hundred (100) members, or major fraction thereof.

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"Section 4. The following officers shall be appointed by the Grand President, with the consent of the Convention: Grand Chaplain, Grand Sergeant-at-Arms, Grand Inner and Outer Guards.

"Article IV. Representation to Grand Lodge Convention.

"Section 1. No members shall be eligible for election as delegate or alternate to the Grand Lodge Convention unless they shall have been members of the Brother-

hood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, in good standing, continuously for the three (3) years immediately preceding the date of the convening of the Convention and shall be members of the lodge which they seek to represent. They must be actually employed in railroad, steamship or express service, at the time of their election and shall have been so employed continuously for at least sixty (60) days prior to the time of election, provided that members exclusively employed by lodges, Boards of Adjustment, or the Grand Lodge, shall be eligible to election as delegates or alternates. The three (3) years provision of this section shall not apply to members of new lodges for the first three (3) years of their existence. No member shall be eligible for election as delegate or alternate until sixty (60) days after admission into the lodge. All delegates and alternates shall be elected during the period December 1st to March 1st, previous to date of the convening of the Convention.

984 "Section 2. Representatives must produce certificate of election under the seal of their lodge, with membership cards or receipts showing all dues and assessments paid up to and including the month in which the Convention is held, before being seated.

"Section 3. Delegates to the Grand Lodge Convention shall receive as compensation for their services, while attending each regular session of the Grand Lodge, four cents (4c) per mile mileage each going to and returning from the meeting place of said Convention by the most direct ticketing route, and an allowance of ten ($10.00) dollars per diem each, including Sunday, for each day's session of the Grand Lodge attended by them. Such mileage and per diem allowance shall be paid out of the Convention Fund.

"Article V. Session of Grand Lodge. Section 1. The Grand Lodge shall convene in regular session on the second Monday in May, triennially, at 10:00 A. M., in such city as may be determined upon before adjournment of the previous session.

"Section 2. Upon request of one hundred (100) or more lodges located within not less than one-half of the states and provinces under the jurisdiction of this Brotherhood, the Grand Secretary-Treasurer shall submit a ballot to the membership for vote upon the question of holding a special convention for consideration of questions which may arise. Such conventions, if called, shall have all the powers and authority of a regular convention and shall be called within ninety (90) days after the result of the ballot has been declared. In the event of such ballot being necessary the Grand Secre-
985 tary-Treasurer shall have prepared and transmitted to Secretaries of all lodges a sufficient number of ballots with such specific instructions thereon as will enable all members to cast an intelligent vote. Secretaries of lodges shall forward the ballots (or votes) to the Grand Secretary-Treasurer in envelopes provided for that purpose, plainly marked with the date on which they are to be returned. The Grand Secretary-Treasurer shall hold all such ballots (or votes) intact and sealed ready for counting and tabulating by tellers to be named by the Board of Trustees.

"Section 3. One hundred and twenty-five (125) delegates shall constitute a quorum for the transaction of business.

"Section 4. After three (3) days from the time fixed for convening a regular or special session, should no quorum appear the session shall be adjourned sine die.

"Section 5. Upon the reading, by the Grand Secretary-Treasurer, of the roll of delegates elect from lodges entitled to representation as prepared by the Credential Committee, the delegates or alternates therein named shall be seated and shall be a body competent to transact business.

"Section 6. Should protest be filed against the seating of any delegates, or alternates, the Grand Lodge, as temporarily organized, shall immediately dispose of all such cases.

"Section 7. The first act of the Grand Lodge Convention shall be to nominate and elect a Committee on Committees composed of five (5) delegates, to be elected by a majority vote and whose duty it shall be to name, as soon as practicable, the following committees:

986 1. Committee on Appeals.

2. Committee on Petitions and Resolutions.

3. Committee on Ritual.

4. Committee on Finance and Salaries.

5. Committee on Mileage and Per Diem.

6. Committee on Death Benefit Department.

7. Committee on State and National Legislation.

8. Committee on Labor and Labor Statistics.

9. Committee on Grand Lodge Officers' Reports.

10. Committee on Official Publication.

11. Committee on Printing and Press.

With the exception of the Committee on Mileage and Per Diem, the above committees shall consist of not less than five (5) nor more than ten (10) delegates each and no delegate shall be eligible to serve on more than one committee during the entire session of the Convention.

"Section 8. The Committee on Legislation shall be appointed by the Grand President and shall consist of five (5) representatives. This Committee shall examine and report on all proposed amendments to the Constitution of the Grand Lodge, statutes of local lodges and the protective laws and such other matters as may properly be referred to it by the Convention, Grand President, Grand Secretary-Treasurer, Grand Executive Counsel, Board of Trustees and Board of Advocates.

This committee shall meet in the Convention City at least five (5) days prior to the time set for the convening of the Convention and proceed to business. It shall consist of at least one (1) from the different classes of employes of which the membership of the Brotherhood is composed.

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"Section 9. The Committe on Credentials shall be appointed by the Grand President and shall consist of five (5) or more representatives. It shall be the duty of this committee to examine into the standing of all lodges, the regularity of the credentials of delegates and the

right and title of said lodges to representation in the Grand Lodge. This committee shall meet in the Convention City at least one (1) day before the convening of the Convention and proceed to business.

"Section 10. The Committee on Rules and Order of Business shall be appointed by the Grand President and shall consist of five (5) representatives. This committee shall meet in the Convention City at least one (1) day prior to the convening of the Convention for the purpose of formulating rules for the guidance of the Grand Lodge Convention.

"Article VI. Official Seal. Section 1. The official seal of the Grand Lodge shall be circular in form and shall bear the inscription Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, (Grand Lodge), with the emblem of the Brotherhood in the center of the circle.

"Section 2. The seal shall be attached to all official documents, circulars and papers emanating from the Grand Lodge and its Executive Officers and the same shall be recognized and acknowledged as legal when printed thereon.

"Article VII. Grand Lodge Officers. Section 1. The Grand President and Grand Secretary-Treasurer, National Legislative Counsel and Editor of the Railway Clerk shall be nominated and elected on one ballot; the seven (7) Vice Grand Presidents shall be nominated and elected on one ballot; the five (5) members of the Board of Trustees shall be nominated and elected on one ballot by the Grand

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Lodge at its regular triennial session and shall serve until the election and installation of their successors unless relieved of their functions by due process.

"Section 2. The Grand President shall appoint a sufficient number of tellers to receive and count the votes; a majority of all votes cast shall be necessary to elect, and should there be no choice on the first ballot the candidate receiving the lowest number of votes or less than ten percent of the total votes shall be dropped and so on with each succeeding ballot, until the choice is made. Any ballot which does not carry a vote for all seven (7) Vice Grand Presidents and any ballot which does not carry a vote for all five (5) members of the Board of Trustees shall be declared illegal.

"Section 3. No Grand Lodge Officer shall hold more than one salaried position at the same time, and shall not devote his time to any interests outside of the Brotherhood, except those that the Brotherhood as an Organization may be interested in.

"Section 4. All members of the Brotherhood in good standing and no others shall be eligible to office therein.

"Article VIII. Grand President's Duties and Prerogatives.

"Section 1. The Grand President shall exercise general supervision over all the affairs of the Brotherhood.

989 "Section 2. He shall preside at all sessions of the Grand Lodge, enforce strict observance of the laws, rules and regulations of the Brotherhood, and

he shall have a vote at all elections and, in case of a tie, shall have the deciding vote on all questions before the Grand Lodge.

"Section 3. He shall at all times strictly enforce the laws of the Brotherhood and shall call to account any member or members of the Brotherhood violating the same. He shall have sole power and authority to interpret the Constitution and laws, subject to appeal to the Grand Executive Counsel, and shall advise the membership through the Railway Clerk of any such interpretations issued, and may issue dispensations not inconsistent with said Constitutions and Laws.

"Section 4. He shall pass upon and approve or reject all applications for charters for the establishment of lodges when received from the Grand Secretary-Treasurer properly indorsed, and shall arrange for the institution of such lodges when the applications have been approved by him. He shall be empowered to suspend the charters of lodges for any violation of this Constitution and By-Laws of the Brotherhood, such suspended lodges may appeal to the Grand Executive Counsel, but such appeal must be made within ninety (90) days from date of suspension. If on the appeal the suspension is approved by the Grand Executive Counsel, it shall become permanent except that the lodges whose charters are so suspended may appeal to the Grand Lodge convention, which will have final jurisdiction in all such cases. He shall instruct the Secretary-Treasurer of such suspended lodges to turn over to the Grand Secretary-Treasurer all records, and other property of the Grand Lodge.

If the suspension be not sustained the lodge and its members shall be considered as not having been suspended. All records and other property in the possession of the Grand Secretary-Treasurer because of and during the period of suspension shall be returned to the lodge, and the lodge or any of its members shall be reimbursed for all legitimate expense incurred in handling this matter of suspension out of the funds of the Grand Lodge.

"Section 5. He shall establish all pass words and cause same to be transmitted by the Grand Secretary-Treasurer to all lodges entitled thereto within thirty days of the termination of the last password.

"Section 6. He shall have power to suspend any member for violation of the Constitution and laws of the Brotherhood or conduct unbecoming an officer or member of the Organization. Such suspended member shall have the right to appeal to the Grand Executive Counsel as hereinafter provided, and if the Grand Executive Council sustains this suspension it shall become permanent unless reversed by the next Grand Lodge Convention. If the suspension be not sustained the member or members affected shall be restored to good standing in the Brotherhood with all rights and privileges due them as if they had never been suspended, and the member or members shall be reimbursed out of the funds of the Grand Lodge for all legitimate expense incurred by him or
991 them in handling the matter of the suspension.

"Section 7. He shall discipline all lodges, boards of adjustment, federations, and for that purpose shall have authority to arrest or revoke charters for disobedience of the Constitution and Laws of the Brotherhood.

"Section 8. He may appoint a Vice Grand President or any member of the Brotherhood to perform a specific act or specific acts in his stead when circumstances or occasion demands, and by letter of instructions set forth the act or acts to be performed, upon the accomplishment of which he shall require of the Vice Grand President or member appointed, a full report of his official acts.

"Section 9. He shall employ such clerical help necessary to conduct the business of his department. Such employees shall be members of the Brotherhood at the time of their employment. He shall also employ such assistants and field representatives, subject to the confirmation of the Grand Executive Council, necessary to take care of organization work and shall pay such salaries as the Grand Executive Council may deem proper. In case of emergency he shall have authority to employ such additional help and such legal advice as may be considered necessary.

"Section 10. He shall approve the by-laws of all lodges, boards of adjustment, federations and other local or subordinate bodies, when not in conflict with this Constitution. He shall assemble all General Chairmen as a General Committee when the question of wages or working conditions becomes a national issue, such assemblages shall be for the purpose of consultations, and
992 shall be of an advisory nature. All expenses of such meetings and individual expense of the General Chairman shall be borne by the Grand Lodge.

"Section 11. He shall have authority to order a strike affecting any or all of the membership involved when requested to do so by the Vice Grand President in

charge of a designated territory, when such request is agreed upon and approved by the Board or Boards of Adjustment affected. In the event of a strike, the Grand President shall be the recognized leader with the approval of the Grand Executive Council shall have authority to command the entire resources of the Brotherhood, exclusive of the Death Benefit Department Fund. The agency hereinbefore authorized to sanction a strike shall also have authority to declare a strike at an end.

"Section 12. He shall with the approval of the Grand Executive Council, have authority to appropriate such funds of the Brotherhood, exclusive of the funds of the Death Benefit Department, for legal advice and other expenses as in his judgment may be necessary for the successful prosecution of a strike.

"Section 13. He shall, with the approval of the Grand Executive Council, have authority to appropriate such funds from the Brotherhood, exclusive of the Death Benefit Department fund, as may in his judgment be necessary in case of lockouts and or controversies where the Brotherhood is involved in protecting itself against company unions, dual organizations and other such movements.

993 "Section 14. He shall furnish within a reasonable time to the Grand Executive Council, any information within his possession that it may require concerning matters pertaining to the affairs of the Brotherhood.

"Section 15. He shall give bond in the sum of ten thousand ($10,000.00) dollars, satisfactory to the Board of Trustees, the expense of which shall be borne by the Brotherhood, which bond shall be held in

trust by the Board of Trustees. At the expiration of his term of office, he shall make a full and complete report to the Grand Lodge Convention of all of his official acts, together with suggestions and recommendations for such improvements and changes, his experience and knowledge may deem advisable.

"Article IX. Duties of Grand Secretary-Treasurer.

"Section 1. It shall be the duty of the Grand Secretary-Treasurer to keep an accurate journal of the proceedings and transactions of the Grand Lodge while in session, to preserve the archives of the Brotherhood, and to perform such other duties as may be designated by the Grand Executive Council and or the Laws of the Brotherhood.

"Section 2. He shall receive all monies due the Grand Lodge from whatsoever source and shall have charge of the seal and all books, papers and property of the Brotherhood not otherwise provided for.

"Section 3. He shall receive all applications for charters to establish lodges, and when accompanied by the required fee, and signed by ten (10) or more persons, he shall indorse and forward such application to the Grand President, and if approved by the Grand President, the Grand Secretary-Treasurer shall issue such lodge a charter signed by the Grand President and himself, bearing the seal of the Grand Lodge, within thirty (30) days.

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"Section 4. He shall keep a register of all lodges with the date of their organization, their time of meetings, place of their location and a correct list of all members

of the Brotherhood and their last given address. He shall have printed a sufficient supply of yearly membership cards, to be furnished secretaries of local lodges on the receipt of per capita tax for the last quarter of the fiscal year for which membership cards have been issued; cards to be of suitable design, bearing the seal of the Grand Lodge and the signatures of the Grand President and the Grand Secretary-Treasurer, with a blank space provided for the signatures of the President and Financial Secretary of the lodge, and member to whom card is issued. The Grand Secretary-Treasurer shall issue all membership cards, inserting name of member and official card number. When necessary to issue duplicate cards, he shall furnish same plainly printed or stamped "Duplicate" across the face of same. He shall furnish to all financial secretaries immediately upon receipt of the current quarter per capita tax, membership stamps for each month of the succeeding quarter for each member on whom the lodge has remitted per capita tax; stamps to be of different color for each month of the quarter. In cases of members who are out of work, the financial secretary, over the seal of the lodge, shall notify the Grand Secretary-Treasurer at the end of the quarter, giving a complete list
995 of the members who are out of work, and for whom "out of work stamps" are requested. These stamps will be furnished to the member free of charge and the member will not be required to pay any dues for the months he is out of employment and received "out of work" stamps. Upon receipt of proper certified statement from the financial secretary of a local lodge, the Grand Secretary-Treasurer shall waive per capita tax on such members. He shall have printed in triplicate, a standard form, for the use of the local lodges in the

handling of various reports required by the Grand Lodge, the original of which shall be forwarded by the local lodge to the Grand Secretary-Treasurer, duplicate copy of the General Secretary-Treasurer of the Board of Adjustment, and the triplicate copy to be retained by the local lodge for its record.

"Section 5. He shall conduct all necessary correspondence of his office and attest all official documents with his signature and the seal of the Grand Lodge, and provide himself with all books and stationery necessary to conduct the business of his office.

"Section 6. He shall have charge of all of the funds of the Grand Lodge, pay out the same by order of the Grand Lodge or in liquidation of the legitimate expenses of the Brotherhood when approved by the Grand President. He shall not invest the funds of the Grand Lodge or any portion thereof in real property, stocks, shares, bonds or securities or for any similar purposes without first obtaining in writing the consent of the Grand Executive Council and the Board of Trustees.
996 The voucher system for the expenditure of all Brotherhood funds shall be used and made in triplicate.

"Section 7. He shall employ the clerical help necessary to conduct the business of his department, all of whom shall be members of the Brotherhood at the time of their employment and shall pay such salaries as the Grand Executive Council may deem proper.

"Section 8. He shall be the General Auditor of the Brotherhood and shall, on the approval of the Grand Executive Council, employ such auditors as they may deem necessary, with power to examine the books and accounts

of any lodges, System or District Boards of Adjustment at any time, and may, when conditions warrant authorize any system or District Board to make such audits, and pay such salary and expenses as the Grand Executive Council may deem proper.

"Section 9. Upon receipt of reports of lodges and notification of the election of delegates and alternates, he shall immediately mail to delegates elect, a certificate bearing the name of the delegate and of his alternate.

"Section 10. He shall, on or before March 1st, previous to the session of the Grand Lodge, have printed all proposed amendments to the Constitution, statutes and protective laws, received by him from delegates, local lodges, System, District or Terminal Boards of Adjustment. He shall mail all newly elected delegates copies of the proposals on or before April 1st, prior to the Convention, copies of which shall be furnished to the Committee on Legislation immediately it has convened.

997 "Section 11. He shall prepare a temporary roll of Grand Lodge officers, delegates and alternates legally entitled to seats in the Grand Lodge, and a list of delegates and alternates not entitled to seates in the Grand Lodge according to the laws of the Brotherhood, and shall furnish the Committee on Credentials with all the necessary information in his possession.

"Section 12. He shall, as soon as circumstances permit, furnish the members of the Grand Lodge participating in the work of the Convention, a printed copy of the permanent and temporary committees named by the Grand President and the Committee on Committees, at

each regular session of the Grand Lodge. He shall render a full and complete report to the Grand Lodge Convention of all his official acts and an accurate and comprehensive statement in six months periods of all receipts and expenditures of funds of the Grand Lodge, together with its assets and liabilities. He shall, before assuming the duties of his office, give bond in such amount as may be determined by the Board of Trustees, and satisfactory to it, the expense of which shall be borne by the Brotherhood.

"Section 13. He shall have all Grand Lodge Officers' reports consolidated in one book and mailed to the duly elected delegates, 15 days prior to the convening of the convention.

"Article X. Duties of Vice Grand Presidents.

"Section 1. Vice Grand Presidents will be under the immediate supervision of the Grand President, and shall have supervision over the affairs of the Brotherhood in the territory to which they are assigned. They shall consult with and assist Railroad, Express, System or District Boards of Adjustment in their territory for the purpose of securing an amicable adjustment of wage and schedule disputes. They shall exercise su, ervision over organizing work in their district and do all in their power to promote and advance the welfare of the Brotherhood. They shall make a printed report of their official acts and work, during their term of office to each session of the Grand Lodge, and shall give bond at the discretion of th Board of Trustees.

998

"Section 2. The Vice Grand President of the Express Division shall have his office in the same city as the United States Railroad Labor Board or its successor.

"Article XI. Grand Executive Council—Duties and Jurisdiction.

"Section 1. Between Conventions all executive and judicial power of the Grand Lodge shall be vested in the Grand Executive Council, which shall be composed of the Grand President, Grand Secretary-Treasurer, all Vice Grand President, and shall have jurisdiction over the entire affairs of the Brotherhod, as provided in these laws, and their decision shall stand unless reversed by the Grand Lodge Convention or referendum as hereinafter provided.

"Section 2. The Grand Executive Council may, when conditions justify, authorize the Grand Secretary-Treasurer to transfer, temporarily, a specified amount of money from one fund to another. The Council shall also have control of any unusual or extraordinary expenditure of funds.

999 "Section 3. The Council, exclusive of the Grand President, shall hear and decide all appeals made from the decision of the Grand President.

"Section 4. The Grand President shall be the Chairman and the Grand Secretary-Treasurer, the Secretary of the Grand Executive Council. Meetings shall be called by the Chairman from time to time as the affairs of the Brotherhood require consideration, and meetings must be called by him upon request of the majority of the Council. They meet in January and July of each year.

"Section 5. Proper record of minutes of all meetings shall be kept and such minutes shall be subject to inspection by any officer of member of this Brotherhood.

"Section 6. The Council shall render a printed report of all its official acts at each triennial session of the Grand Lodge.

"Section 7. Any member of the Brotherhood feeling aggrieved by the decisions of the Grand President in matter of law and equity may appeal to the Council within sixty (60) days after such decision, said appeal to be in writing, original to Grand Secretary-Treasurer and one copy to each member of the Council.

"Section 8. Members of the Council, upon receipt of such charges shall notify the Grand Secretary-Treasurer, in writing, and say if the charges are of such a nature as to demand a special meeting of the Council, the Grand Secretary-Treasurer shall tabulate the opinion of the members of the Council, and if the majority are in favor of a special session to handle, he will issue a call for a meeting, otherwise the charges will be handled at their next regular session.

"Section 9. Both parties shall be served with a copy of the charges as filed with the Council, and shall be notified by the Council of the time and place of meeting, thirty days prior to the date, and the Council shall adjourn from time to time and from place to place as the parties to the trial may agree, or in the case of no agreement on the part of the parties to the trial, then the Council shall determine.

"Section 10. Either party to the trial shall conduct their own case and may be represented by counsel, or in person, or by both before the Council. Counsel shall be a member of the Brotherhood.

"Section 11. The Council shall have access to all papers, correspondence, books or other records of the Brotherhood in case of any investigation in the interest of the Brotherhood; shall have power to summon and require any member to testify concerning all matters under investigation; and any member of the Brotherhood failing or refusing, without sufficient justification, to respond to said summons shall upon proper notification by the Council, be suspended from the Brotherhood.

"Section 12. In cases where witnesses are located in remote places, or if they are unable to appear before the Council, their testimony may be taken in writing, before any member of the Brotherhood who may be appointed and authorized as a commissioner for such purpose by the Council.

1001 "Section 13. All of the evidence presented to the Council during trial shall be reduced to writing, the testimony read by the witness, and if correct the witness shall sign each sheet.

"Section 14. All members in good standing shall be allowed to attend sessions of the Council when they are conducting a trial.

"Section 15. When the testimony has been submitted the Council shall determine the guilt or innocence of the accused and if found guilty, fix the punishment of the member, which shall be reprimand, suspension from office or expulsion from the Brotherhood.

"Section 16. Any member of the Brotherhood preferring charges on frivolous pretext, any member refusing to respond to summons of the Council to testify or submit upon proper subpoena, letters, documents, or files in his possession that might be pertinent to the charges under consideration, shall be dealt with in accordance with the wisdom of the Council, either by reprimand, suspension or expulsion from the Brotherhood.

"Section 17. Any member expelled from membership in the Brotherhood cannot make application for reinstatement until the next Convention, and cannot again be admitted to membership without the consent of the Grand Lodge in session assembled and upon re-entrance into the Brotherhood shall be obligated.

"Section 18. Any member of the Brotherhood feeling aggrieved by the decision of the Council may appeal to the Grand Lodge Convention within sixty days after such decision, in which case the same shall be filed with the Grand Secretary-Treasurer, together with all papers, documents and records in evidence before the Council at the time of trial or hearing.

1002 "Section 19. All cases of appeal and grievances shall be referred to the Committee on Appeals, who shall state the salient points in the case and report their findings to the Grand Lodge Convention with recommendations. Should the Grand Lodge Convention desire, it may order the testimony read and hear the argument of the parties and their counsel, and the Committee shall be sustained or its decision reversed, and if ordered by the Grand Lodge Convention shall be a secret ballot.

"Section 20. The expense of any trial conducted by the Council shall be borne by the Grand Lodge.

"Section 21. The laws of this Brotherhood shall and must be respected. The sanctity of the obligation shall at all times be adhered to and preserved. No officer, member or subordinate lodge of this Brotherhood shall resort to any Court of Law or equity or other civil authority either as parties plaintiff or for the purpose of securing an opinion or decision in connection with any alleged grievance or wrong concerning any case in controversy arising within the organization, until such officer, member or subordinate lodge shall first have exhausted all remedies by appeal or otherwise provided by the laws of the Brotherhood for the settlement and disposition of such rights, grievances or wrong. Not only shall the law be binding on the officer, member or subordinate lodge, but shall likewise so apply to any other officer, member or subordinate lodge who, by their own acts, have made themselves either assessories before or after the fact."

1003 "Article 13.

Official Publication.

Section 1. There shall be maintained an official publication of the Brotherhood known as the Railway Clerk. It shall be published under the Management and Editorship of an Editor, elected by the Grand Lodge, and the publication shall be in accord with the Grand Lodge and under the supervision of the Grand Executive Council."

"Article 20.

Fees and Dues.

Section 1. The initiation fee of this Brotherhood shall not be less than five ($5.00) dollars, which must invariably accompany the application for membership and shall be apportioned as follows:

General Fund (Grand Lodge)	$1.00
Protective Fund (Grand Lodge)	.15
Convention Fund (Grand Lodge)	.15
Death Benefit Dept. Fund (Grand Lodge)	.75
Official Publication (Grand Lodge)	.15
Organization Fund (Grand Lodge)	.30
Total to Grand Lodge	$2.50
Local Lodge	$1.50
Board of Adjustment	1.00"

1004 "Article 21.

Organization Fund.

Section 1. There shall be maintained as an auxiliary to the efficiency of the Brotherhood, an organization fund in the amount as provided for in Article XX, and each member of the Brotherhood shall pay 60 cents per annum, payable quarterly in advance as provided for in Article XX and subject to the same conditions and penalties as prescribed for in Section for the non-payment of dues. This fund is established for the exclusive

purpose of creating and maintaining a sufficient field force. Provided, however, that when arrangements are made by a Board of Adjustment with the Grand President, to perform necessary organization work on their system or District, without utilizing Grand Lodge organizers, the thirty cents (30c) of each application fee apportioned to the Organization Fund shall be remitted to the Board of Adjustment. The Grand Secretary-Treasurer shall be the custodian of the Organization Fund."

"Article 31.

Referendum and Recall.

Section 1. The question of a referendum vote on all matters affecting the welfare of this Brotherhood or on proposed amendments to the Constitution and By-Laws, except as provided for in Article V, Section 2, may be submitted to the Board of Trustees, upon request of one hundred (100) or more lodges located within not less than one-half of the states and provinces under the jurisdiction of this Brotherhood. If the petition accompanying the proposed referendum be signed by one hundred (100) or more lodges located within not less than one-half of the states and provinces under
1005 the jurisdiction of this Brotherhood, who at a regular meeting adopted the said amendment and certified to same under the signature of the President and Secretary and seal of the lodge, the Board of Trustees shall submit said proposition, or proposed questions, to the membership without alteration within thirty (30) days from the date of receipt of said proposition, or

proposed question, by the Secretary of the Board, by ballot with a copy of the proposed amendment. Said ballot shall contain the works "for the proposition," stating nature of proposition, and "Against the proposition." stating the nature of the proposition. When such referendum vote is taken a two-thirds majority of those voting is required to carry, and unless at least thirty-three and one-third (33-1/3%) per cent of the entire membership vote in such referendum the matters voted on shall be declared lost, the same as though they had failed to secure the necessary two-thirds vote. The ballot shall be closed within sixty (60) days from the date of the submission to the membership, and the voted ballots shall be forwarded to the General Chairman of each respective Board of Adjustment. A committee consisting of the General Chairman, General Secretary-Treasurer and at last one other member of that district appointed by the General Chairman, shall open and count and tabulate the results to the Board of Trustees. The original ballots shall be held in trust for not less than six months.

Section 2. The holder of an elective Grand Lodge Office may be removed at any time by the qualified members of the Brotherhood. The procedure to effect the removal of an incumbent of an elective
1006 Grand Lodge Office shall be as follows: A petition filed by 100 or more lodges located within not less than one-half of the states and provinces under the jurisdiction of this Brotherhood, demanding the election of a successor to the officer sought to be removed, shall be filed with the Board of Trustees,

provided that the petition submitted to the Board of Trustees shall contain a general statement of the grounds for which removal is sought. If the petition shall be found to be sufficient, the Board of Trustees shall submit a recall ballot to the membership within thirty (30) days after the petition has been filed with them. The Board of Trustees shall make, or cause to be made, publication of notice and all arrangements for holding such election by ballot, and same shall be conducted, returned and results thereof be declared in all respects as mentioned in Section 1, of this Article. This ballot shall contain the names of the candidates who have been nominated for the Grand Lodge Office for which the recall is made. It shall be necessary that each nominee have the indorsement of not less than fifty (50) lodges. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. In the event no condidate shall receive a majority of the total votes cast, a second election shall be held by ballot. The second ballot shall only carry the names of the two (2) candidates receiving the highest votes on the first ballot. Any officer sought to be removed can be a candidate to succeed himself, and unless he requests otherwise in writing to the Board of Trustees, the Board of Trustees shall place his name on the official ballot without nomination. In any such removal
1007 election the candidate receiving the majority of the votes cast will be declared elected. At such election, if some other member than the incumbent receive the majority of the votes cast, the incumbent shall be deemed removed from office. In case the candidate receiving the majority of votes cast should fail to qualify within ten (10) days after receiving notifica-

tion of election, the office shall be deemed vacant. If the incumbent received the majority of votes cast, he shall continue in office. The ballot shall be accompanied with circulars stating the charges or grounds on which removal is asked and also a statement from the incumbent in his behalf."

"Article 34.

Suspension.

Section 1. Any member having been suspended for non-payment of dues may be reinstated at the discretion of the lodge upon payment of all dues for the entire period of suspension, or a reinstatement fee of not less than one and one-half times the regular initiation fee."

"Statutes.

For the Government of Lodges under the jurisdiction of the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employee.

1008 Preamble.

For the purpose of effecting uniformity in the administration of privileges and benefits of its members, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ordains the following Constitution for the government of subordinate lodges."

"Article 4.

Officers.

* * * Section 15. It shall be the duty of the Organization Committee to compile a list of the names and home addresses of all eligible non-members, if possible, within the jurisdiction of the lodge, and forward to the Grand President, the General Chairman and General Secretary-Treasurer of the Board of Adjustment, on forms provided for that purpose, and shall use every endeavor to increase the membership of their lodge."

"Article 5.

Fees and Dues.

Section 1. The fees and dues of lodges shall not be less than five ($5.00) dollars for initiation and such dues as may be determined upon by the lodge, provided the minimum amount charged shall be not less than twelve ($12.00) dollars per annum."

1023 Defendant next introduced in evidence resolution of United States Railroad Labor Board passed at Chicago, Illinois, July 3, 1922, and contained on pages 1139 and 1140 of the decisions of that Board for 1922 with appendix, Volume 3; as follows:

Exhibit R-16. "Resolution.

Chicago, Ill., July 3, 1922.

"Whereas the six organizations comprising the Federated Shop Crafts have notified the Railroad Labor Board that a very large majority of the employees which they represent have left the service of the carriers, that the members of said organizations are no longer employees of the railways, under the jurisdiction of the Railroad Labor Board or subject to the Transportation Act, and

"Whereas the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers, International Brotherhood of Firemen and Oilers, and Brotherhood Railroad Signalmen of America have also made known to the board that they have put out strike ballots on all or a part of the carriers which may result in the classes of employees which they respectively represent leaving the employ of the carriers, and

"Whereas in the future submission of disputes involving rules, wages, and grievances of said classes of employees of the carriers, it will be desirable, if not a practical necessity, for the employees of each class on each carrier to form some sort of association or organization to function in the representation of said em-
1010 ployees before the Railroad Labor Board, in order that the effectiveness of the transportation act may be maintained: Now, therefore, be it

"Resolved, That it be communicated to the carriers and the employees remaining in the service and the new

employees succeeding those who have left the service to take steps as soon as practicable to perfect on each carrier such organizations as may be deemed necessary for the purposes above mentioned; and be it further

"Resolved, That on any carrier where either of the abovenamed organizations, by reason of its membership severing their connection with the carriers, ceases to represent its class of employees, procedure similar to that above suggested in the case of the shop crafts is recommended; and be it further

"Resolved, That the employees remaining in the service and the new ones entering same be accorded the application and benefit of the outstanding wage and rule decisions of the Railroad Labor Board, until they are amended or modified by agreements with said employees, arrived at in conformity with the transportation act, or by decision of this Board; and be it further

"Resolved, That if it be assumed that the employees who leave the service of the carrier because of their dissatisfaction with any decisions of the Labor Board are within their rights in so doing, it must likewise be conceded that the men who remain in the service and those who enter it anew are within their rights in accepting such employment, that they are not strikebreakers seeking to impose the arbitrary will of an employer on employees; that they have the moral as well as the legal right to engage in such service of the American public to avoid interruption of indispensable railway transportation; and that they are entitled to the protection of every department and branch of the Government, State and National.

1011

It is suggested that carriers bulletin this resolution which was adopted by the majority action of the Board."

Defendant thereupon introduced in evidence the amount and the statement on the face of each voucher, on all vouchers produced by Mr. Cottingham in compliance with subpoena issued by plaintiff.

1012 Complainant thereupon introduced in connection with that the detail supporting said vouchers, to which reference is made on the face of each voucher. Said vouchers are as follows:

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

1372

June 28th, 1927

Registered in June-1927

IN FAVOR OF

F. Ehlinker, Chief Clerk,
c/o Supt. T&NO RR Co.,
Ennis, Texas.

64190

For expenses incurred during the month of June, 1927, while engaged in the ordinary duties as Chief Clerk to Superintendent, and as shown in detail on form 148, Itemized Statement of Personal Expenses:

$39.90

Thirty nine A 90/100 - - -

Form 141 C.S.

STATEMENT OF PERSONAL EXPENSES

Headquarters at _____ Dept. _____ Date _____ 192

I have paid the amounts shown below for necessary expenses while traveling in the service of the _____ during the month of _____ 192

on the following business: _____

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR BERTH FARE	STEAMBOAT OR BOAT FARE	STREET CAR FARE	MISCELLANEOUS (See Column)	TOTAL
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
	TOTAL									

INDEXED BY

COMPTROLLER'S OFFICE No. 4
JUN 28 1917
Checked Vouched

EXPLANATION OF EXPENSES REPORTED IN "MISCELLANEOUS" COLUMN	AMOUNT

Certified correct

Address

Approved: _____

Approved: _____ Superintendent

TEXAS AND PACIFIC RAILWAY COMPANY — Form 8 — Pay Roll Serv't Desk 2346

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

Dept 733350

Sept 1st, 1927

Registered in August, 1927

IN FAVOR OF: F. Ehlinger, Chief Clerk to Supt., c/o Superintendent T&P Ry Co., Ennis, Texas.

For expenses incurred during the month of August, 1927, while engaged in the ordinary duties as Chief Clerk to Superintendent, and as shown in detail on form 148, Itemized Statement of Personal Expenses: $16.36

TO TREASURER SEP 6 1927

TO FORM STOCK DESK SEP 8 1927

RECEIVED SEP 2 1927 AUDITOR DISBURSEMENTS

Fifty six & 36/100 - - -

Form 168 2317 C.A.

STATEMENT OF PERSONAL EXPENSES

Headquarters at Ennis Dept. Transportation Date Aug 1927

I have paid the amounts shown below for necessary expenses, while traveling in the service of the T & N O R R Co during the month of Aug 1927

in the following business Chief Clerk to Supt

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR R. R. FARE	STAGE OR AUTO FARE	STREET CAR FARE		MISCELLANEOUS	TOTAL
1	E. H. Houston					2.50		.25		23.50	2.75
19	Houston	.50	.90	1.00	2.50			.20			5.10
20	"	.60	1.00	.85	2.50						4.95
21	"	.40	1.10	.90	2.50						4.90
22	"	.50	.80	.95	2.50						4.75
23	"	.45	.75	1.00	2.50						5.05
24	"	.45	.60	.70	2.50						4.25
25	"	.50	.75	.90	2.50						4.65
26	"	.50	.50	.75	2.50						4.25
27	"	.50	.55	.50	2.50						4.05
28	"	.50	.75	.70	2.50						4.45
		.40	.75	.90	2.50						4.55
		.60	.75					.20			1.60
TOTAL		6.90	10.75	9.45	27.50	2.50		.65		23.50	56.35

CALCULATIONS VERIFIED IN D. A. TRANSPORTATION DIVISION

INDEXED BY

EXPLANATION OF EXPENSES ENTERED IN "MISCELLANEOUS" COLUMN	AMOUNT

Certified: E. H. Houston

Address: % E. H. Houston

Ennis, Texas

Approved: A. J. Hollingsworth

Approved: Superintendent.

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

69686

July 8 1927

June 1927

Registered in

IN FAVOR OF

S. W. Herrington, Chief Clerk
Room 1, Grand Central Station
Houston, Texas

For expenses incurred by you during the months of May and June 1927 while engaged in the ordinary duties of Chief Clerk and as shown in detail on Form 146, Statement of Personal Expenses.

CALCULATIONS VERIFIED
JUL 14 1927
COMPTROLLER'S OFFICE

TO TREASURER
JUL 21 1927

Date

CHARGEABLE TO

TITLE OF ACCOUNT

FORM 112
JUL 18 1927
DESK

Division Accountant

69686

STATEMENT OF PERSONAL EXPENSES

INDEXED

| | | |

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

E-977

73863

Registered in

Form 168, Statement of Personal Expenses.

CHARGEABLE TO

RECD AUG 3 1927 DISBURSING ACCOUNTS

AUG 1 1927

Disbursing Accountant

For Auditor of Disbursements

Form 143 G.S.

STATEMENT OF PERSONAL EXPENSES

Headquarters at Houston Dept. Operating Date Aug 29th 1927

I have paid the amounts shown below for actual expenses, while traveling in the service of the Texas & Pacific Ry. Co. during the month of June 1927

on the following business: Div. Accounts

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR BERTH FARE	STAGE OR AUTO FARE	STREET CAR FARE		MISCELLANEOUS	TOTAL
	Houston										
	"										
	"										
	Paducah										
	TOTAL										

7386S

EXPLANATION OF EXPENSES REPORTED IN "MISCELLANEOUS" COLUMN	AMOUNT

Certified correct.

Address.

Approved

SUPERINTENDENT

Approved

B-1212

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

Dept.

Audit 82700

November 2 1927

IN FAVOR OF

C. W. Derrington, Chief Clerk to Supt.
Grand Central Station
Houston, Texas

Registered in October, 1927

For expenses incurred by you during the month of October 1927, while engaged in the ordinary duties of Chief Clerk to Supt., and as shown in detail on Form 148, Statement of Personal Expenses.	$11.65
Eleven & 65/100 - - -

Form 148

STATEMENT OF PERSONAL EXPENSES

Headquarters at _____ Dept _____ Date _____ 192

I have paid the amounts shown below for personal expenses, while traveling in the service of

_____ during the month of _____ 192

The following items:

| | | |

Form 111 Before filing return to _____ C S

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

DEPT. No. H-1291
IN FAVOR OF AUDIT NO. 82307

October 4 1927

Registered in September 1927

C. W. Derrington, Chief Clerk to Supt.
Grand Central Depot
Houston, Texas

For expenses incurred by you during the month of September 1927, while engaged in the ordinary duties of Chief Clerk to Supt. and as shown in detail on Form 148, Statement of Personal Expenses.

$17.45

Received in Form 111 or 1111

For Originating Office

Date's Office

Calculation Correct Seventeen & 45/100

Originating Office

Examined and found correct in accordance with terms of _____
Agreement, Audit No. _____ or Disbursements No. _____
Spur track deposit collected _____ 192
Contract Clerk _____ Date _____ 192

17.45

RECEIVED OCT 6 1927 AUDITOR'S OFFICE HOUSTON, TEXAS

AUDITOR'S OFFICE OCT 8 1927

CHARGEABLE TO 727-28 DAB Term Divn

Account No.	TITLE OF ACCOUNT					
	201 M L Com					17 45
	301 Com Com					2 00
	371 M L Com					2 00

UNIFORM STOCK OCT 6 1927 DESK

APPROVED

APPROVED

CHECKED BY

Division Accountant

For Auditor of Disbursements

Form 100

C.B.

STATEMENT OF PERSONAL EXPENSES

Headquarters at _____ Dept. _____ Date _____ 192

I have paid the amounts shown below for necessary expenses, while traveling in the service of the _____ during the month of _____ 192

on the following business

ORIGINAL

82307

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR BERTH	STREET CAR FARE		MISCELLANEOUS	TOTAL

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

Aug. 16th, 1927

Aug. - 1927

Registered in

W. Miller, Chief Clerk
c/o Superintendent 18th NR Co.,

For services rendered during month of August, 1927, while employed in the office of Chief Clerk to Superintendent, and as shown on Detail or form 148, Itemized Statement of Personal Expenses: $35.75

TO LOS ANGELES
AUG 19 1927

Twenty nine @ 75/100 - - -

Form 140 G.A.

STATEMENT OF PERSONAL EXPENSES 70196

Headquarters at Ennis Dept. Transp. Date Aug 1927

I have paid the amounts shown below for necessary expenses, while traveling in the service of the T. & P. R.R. Co during the month of Aug 1927

on the following business: Chief Clerk to Supt

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR R.R. FARE	STAGE OR AUTO FARE	STREET CAR FARE		MISCELLANEOUS	TOTAL
5	Fenton		.95	.90	2.50						4.35
6	"	.55	1.10	—	2.50					.25	4.40
7	"	.70	1.05	—	2.50					.20	4.45
8	"	.60	.90	1.10	2.50					.30	5.40
9	"	.75	1.15	.95		2.50				.25	5.60
12	"			1.10	2.50						3.60
13		.75	1.20								1.95
	TOTAL	3.86	6.35	4.05	12.50	2.50				1.00	29.75

ITEMIZATION OF EXPENSES REPORTED IN "MISCELLANEOUS" ITEM	AMOUNT
Texas Pullman Porters Trainers, etc.	1.00

Certified correct

H Caldwell

Address c/o Supt Ennis Texas

Approved:

Approved: H Allison Superintendent.

AUG 17 1927

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

Dept E-1698

Audit No. 93192

January 7 1928

Registered in December 1927

IN FAVOR OF

C. W. Derrington, Chief Clerk
Room # 1 Grand Central Depot
Houston, Texas

For expenses incurred by you during the month of December 1927, while engaged in the ordinary duties of Chief Clerk to Superintendent, and as shown in detail on Form 148, Statement of Personal Expenses.

$4.60

RECEIVED JAN 10 1928 VOUCHER REGISTER

TO ROOM DESK 1019

JAN 13 1928

For A 60/100 - - -

Form 110

U.S.

STATEMENT OF PERSONAL EXPENSES

Washington, Dept. Date 1927

I have paid the amounts shown for necessary expenses, while traveling in the service of the

on the following dates during the month of 1927

ORIGINAL

DAY	LODGING	SUPPER	BREAKFAST OR LUNCH	SLEEPING CAR OR R.R. FARE	FERRY OR AUTO FARE	STREET CAR FARE		MISCELLANEOUS	TOTAL
									2 10
									2 60

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER Dept. R-335

IN FAVOR OF Auditor's No. 103907

C.W.Derrington,Chief Clerk to Supt.
Grand Central Depot
Houston, Texas.

$18

RECEIVED FEB 15 1924 PM INDEX DESK

REGISTERED FEB 15 1924 MAIL DESK

FORM 6101

Terminal Division 15 50

2 50

STATEMENT OF PERSONAL EXPENSES

Headquarters, [illegible] Date [illegible] Date [illegible] 19[illegible]

I have paid the amounts shown below [illegible] while traveling on official business of the [illegible] Division, Department of Justice, during the month of [illegible] 19[illegible], on the following itinerary:

ORIGINAL

DAY	PLACE	BREAKFAST	DINNER	SUPPER	LODGING	RAILWAY FARE	STREET CAR FARE	MISCELLANEOUS	TOTAL
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
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[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
[illegible]	[illegible]								
TOTAL									

ISSUED BY

103907

Verified Operator

ITEMIZATION OF EXPENSES REPORTED IN "MISCELLANEOUS" COLUMN	AMOUNT
[illegible]	

Certified correct

Address

Approved SUPERINTENDENT

Approved

13

Before filing return to _____ C.A.

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

DEPT. No. T-1535

IN FAVOR OF

AUDIT No. 666341

June 3 1927

D.D. Reid, Roadmaster's Clerk
Room 22, Grand Central Depot
Houston, Texas

Registered in May 1927

For expenses incurred by you during the month of May 1927 while employed in the ordinary duties of Roadmaster's Clerk and as shown in detail on Form 14d, Statement of Personal Expenses. 1.50

Calculations Verified
JUN 7 1927
Comp. Oper. No 14

TO TREASURER
JUN 10 1927

Examined and found correct in accordance with terms of _____
Agreement, Audit No. _____ or Disbursements No. _____
Spur track deposit collected _____ 192
Contract Clerk _____ Date _____ 192

CHARGEABLE TO 727 - [illegible] Div

TITLE OF ACCOUNT

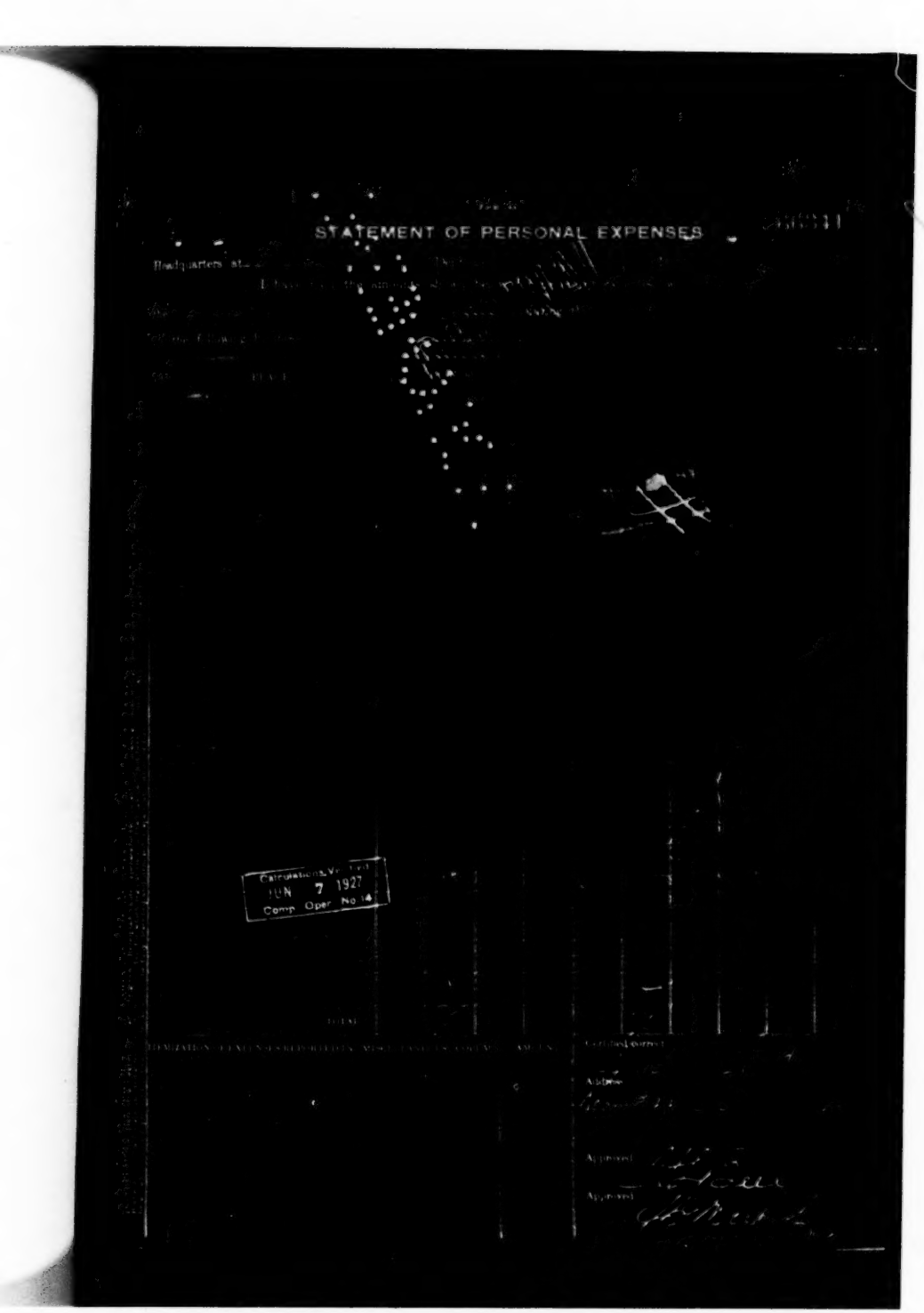
401 Gen Com
M Br O m

VOUCHER BUREAU
JUN 10 AM
SOUTHERN PACIFIC LINES

VOUCHER BUREAU
JUN 10 AM
SOUTHERN PACIFIC LINES

RECEIVED
JUN 6 1927
ACCTS. AUDITS & DISBURSEMENTS

RECEIVED
JUN 8
1927


STATEMENT OF PERSONAL EXPENSES
Calculations, Vol. 1927
JUN 7 1927
Comp. Oper. No. 14

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

66584

$2.00

JUL 14

CHARGEABLE TO

TO FORM 3101
DESK
JUL 11

JUL 13 A.M.
SOUTHERN PACIFIC

REGISTERED

Form 116

STATEMENT OF PERSONAL EXPENSES

Headquarters at _____ Dept. _____ Date _____ 192_

I have paid the amounts shown below for _____ while traveling in the service of _____ 192_

on the following business: _____

ORIGINAL

DAY	PLACE	HOTEL	BOARD	STATE TAXES	MISCELLANEOUS	TOTAL
	TOTAL					116 40

66884

EXPLANATION OF EXPENSES REPORTED IN "MISCELLANEOUS" COLUMN	AMOUNT

Certified correct

Address

Approved

Approved

Pay Roll Disk Book

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

No. 73757

[illegible], Postmaster's and T. & P. Supervisor's Clerk
[illegible] Grand Central Depot
Houston, Texas

[illegible] services rendered by me during the month of July 1927 while employed in the ordinary duties of postmaster's and T. & P. Supervisor's Clerk and as shown in detail on P. O. Dept. Statement of Personal Expenses. 97.20

Item 1 89/1037 ..... 97.20

CHARGEABLE TO

[illegible]

[illegible]

Disbursing Accountant

For Auditor of Station Accounts

Form 148 C.L.

STATEMENT OF PERSONAL EXPENSES

Headquarters at _____ Dept. _____ Date _____ 192_

I have paid the amounts shown below for necessary expenses, while traveling in the service of the _____ during the month of _____ 192_ as the following business _____

ORIGINAL

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR B'TH FARE	STAGE OR AUTO FARE	STREET CAR FARE		MISCELLANEOUS	TOTAL
	Houston to Baltimore					50					
	Out Returning	40	70	55		50		1			
									23.37		
TOTAL		40									

ITEMIZATION OF EXPENSES REPORTED IN MISCELLANEOUS COLUMN	AMOUNT

Certified correct

Address _____

Approved _____

Approved _____

SUPERINTENDENT

NZ

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

July 19 1927

July 19

Registered in

IN FAVOR OF
W.S.McDaniel, Chief Yard Clerk
2017 Chestnut St
Houston, Texas

For expenses incurred by you during the month of July 1927 while engaged in the military duties of Chief Yard Clerk and as shown in detail on Form 148, Statement of Personal Expenses. $1.55

Calculations Verified
JUL 19 1927
Comp. Oper. No. 18

RECEIVED
JUL 19
CENTER

One & 55/100 $ 1.55

Examined and found correct in accordance with records.
Agreement, Audit No. _____ Disbursement No. _____
Spur track deposit collected _____ 19__
Contract Clerk _____ Date _____ 19__

CHARGEABLE TO 747-2b Add. Corm Air

ACCOUNT NO	TITLE OF ACCOUNT			
	269 AL Sqt			

TO FORMATION
JUL 20 1927
DESK

Division Accountant

APPROVED

APPROVED

EXAMINED BY

Form 148 C.S.

STATEMENT OF PERSONAL EXPENSES

Headquarters at _____ Date _____ Date _____ 192_

I have paid the amounts shown below for necessary expenses, while traveling in the service of the _____ during the month of _____ 192_

on the following business _____

ORIGINAL

DATE	PLACE	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR BERTH FARE	STAGE OR AUTO FARE	STREET CAR FARE		MISCELLANEOUS	TOTAL
	TOTAL									

EXPLANATION OF EXPENSES REPORTED IN "MISCELLANEOUS" COLUMN	AMOUNT

Certified correct _____

Address _____

Approved _____

Approved _____

INSTRUCTIONS. [illegible]

Customs Service
JUL 19 1927
Comp. Dept. No. 14

TOTAL

Pay Roll Final Voucher

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

DEPT. 2935

AUDIT NO. 73785

August 3, 1927

IN FAVOR OF

F Ehlinger, Chief Clerk
c/o Superintendent T&NO RR Co
Ennis, Texas

Registered in July 1927

For expenses incurred during the month of July 1927 while engaged in the ordinary duties as Chief Clerk and as shown in detail on form 148 Itemized Statement of Personal Expenses	$21.55
Twenty one & 55/100	21.55

Examined and found correct in accordance with terms of Agreement, Audio No. _____ Disbursers Voucher No. _____

Spot track deposit collected _____ 192__

Disbursers Clerk _____ Date _____ 192__

TO TREASURER
AUG 6 1927

CHARGEABLE TO Various

ACCOUNT	TITLE OF ACCOUNT	Frt.	Pass.	Com.
[illegible]	A Ruff Dallas Mine			
[illegible]				
[illegible]				
[illegible]

Form 148 C. S.

STATEMENT OF PERSONAL EXPENSES

Headquarters at Ennis, Dept. Transportation Date July 192 7

I have paid the amounts shown below for necessary expenses, while traveling in the service of

the T. & P. R.R. Co. during the month of July 192 7

on the following business: Acct Supt

73785

DAY	PLACE	BREAKFAST	DINNER	SUPPER	HOTEL OR LODGING	SLEEPING CAR OR R.R. FARE	STAGE OR AUTO FARE	STREET CAR FARE	P. D.	MISCELLANEOUS	TOTAL
24	To Houston					2.50				.25	2.75
27	"	.75	1.15	1.00	2.00			.20		.30	5.40
28	"	.85	1.10	1.20	2.00			.20		.30	5.85
29	"	.60	.90	1.10	2.00			.20		.80	5.10
30	To Ennis					2.50				.25	2.75

T.&N.O.R.R.Co., Dallas Division

Pay Roll Disbursements

STATEMENT OF ACCOUNT APPROVED FOR VOUCHER

Dept 2709

July 13th, 1927

IN FAVOR OF

Audit No 70077

A. Ehlinger, Chief Clerk to Supt.,
c/o Supt. T&NO RR Co.,
Dallas, Texas.

Registered in July, 1927

For services rendered during the month of July, 1927, while employed in the ordinary line of duty under direction of Superintendent, and as shown in Detail on form 148, Itemized Statement of Personal Expenses: $31.30

TO TREASURER JUL 20 1927

Obligations Verified JUL 19 1927 Comp. Oper. No 14

RECEIVED JUL 19 1927 REGISTER

Thirty 30/100 - - -

Form 116 AA

STATEMENT OF PERSONAL EXPENSES

Employee No. Chicago Dept. Transportation Date July 1917

I expend the amounts shown below for necessary expenses, while traveling in the service of the S. N. O. & T. P. during the month of July 1917

in the following locations: Chief Clerk to Supt.

PLACE	BOARD PER DAY	LODGING	SUPPLIES	MISCELLANEOUS	RAILROAD & CAR FARE	AUTO HIRE	STREET CAR FARE		MISCELLANEOUS	TOTAL
Houston					2.50				.10	2.60
"	.50	.90	1.35		2.40				.10	4.85
Livingston		.75							.10	.85
Houston			.75	.25					.10	1.10
	.50	.75	.50		2.50				.10	4.35
Dallas	.50		.40	1.00						1.90
"										.10
"					2.50				.10	2.60
Houston	.75	1.10	1.35		2.00				.10	5.30

	Name—Division.	Signed.	Number.
	L. P. Bagorry, Lafayette .	10-19-27	1247
1042	Wilson P. Breaux, Lafayette	10-26-27	1358
	M. F. Ditch, Lafayette ..	11- 3-27	1355
E. F. Louviere, Lafayette		11- 1-27	1346
Horace Lacour, Lafayette		10-18-27	1360
Thornwell Fay Landry, Lafayette .		11- 4-27	1394
Lee J. Plaisance, Lafayette		10-31-27	1334
R. P. Robichaux, Lafayette		11- 3-27	1356
John D. Ryan, N. O. Terminal		11-10-27	1398
Stuart Harris, Austin		10-10-27	1261
K. A. Leuschner, Austin		11- 1-27	1353
W. P. Martin, Austin		10- 8-27	1066
David E. Spanberg, Austin		9-21-27	0143
B. W. Spaeth, Austin		10-10-27	1267
J. R. Ashley, El Paso		11-15-27	1380
F. S. Cunningham, El Paso		9-27-27	0963
E. G. Fulkerson, El Paso		11-15-27	1384
Pauline Gillespie El Paso		11-15-27	1381
A. R. Pickett, El Paso		11-15-27	1382
J. B. Roche, El Paso		9-27-27	0959
John Granvell Tatum, El Paso ...		10-13-27	1275
Mrs. P. E. Fleming, Houston		11- 3-27	1365
Helen Black, Yoakum Shops		9- 9-27	0176
P. C. Lloyd, Yoakum Shops		9- 9-27	0162
E. L. Baty, Victoria		10- 2-27	1001
Bart Dillon, Victoria		10- 3-27	1052

	Name—Division.	Date Signed.	Card Number.
G. D. Fullick, Jr., Victoria		10- 4-27	1055
	J. C. Harncir, Victoria ..	10- 8-27	1061
1043	James Keefe, Victoria ...	10- 3-27	1050
	W. E. Owens, Victoria ...	11-14-27	1390
Wilbur C. Polka, Victoria		11-19-27	1391

1041 DOUGLAS D. WADE, called as a witness for defendant, and having been duly sworn, testified as follows:

My name is Douglas D. Wade. I am a railroad clerk. I am an officer of the Association of Clerical Employees, —General Secretary and Treasurer. I can identify this as a list of certain employees who are members of our Association, prepared by me. That is a list of members or clerks who have signed the membership application to the Association of Clerical Employees. That is a list of those who had done that up to November 21st, I believe was the last date on them. These are in addition to those 67 or 68 authorizations which I filed in addition to the 900 and some odd, from employees from whom I had authorizations which I filed with the company. This present list represents memberships that I had over and above those others; there are probably 80 of them I think.

Defendant thereupon introduced in evidence the list referred to, which is as follows:

EXHIBIT R-17.

List of Clerks on System that did not sign Original Petition but have signed Application for Membership to the Association of Clerical Employees. A Membership Blank is attached:

Name—Division.	Date Signed.	Card Number.
M. W. Reed, Algiers Store.....	10-18-27	1289
Edward Knapp, Algiers Store	10- 8-27	1025

W. I. Harris, Beaumont	11- 8-27	0909
Louis O. Langley, Beaumont	9-14-27	0127
Mrs. Eula Little, Beaumont	10-25-27	1314
Victor Lisotta, Beaumont	11- 2-27	1342
R. H. Manning, Beaumont	11- 7-27	0922
F. P. Ogden, Beaumont	11- 8-27	0905
Howard E. Richardson Beaumont	11- 6-27	1354
Council Russell, Beaumont	11- 8-27	1362
C. T. Spruell, Beaumont	10-25-27	1313
Mrs. Irene Vinson, Beaumont ...	8-31-27	0027
E. B. Wilson, Beaumont	10-27-27	1319
W. E. Wilbanks, Beaumont	11- 8-27	1364
Beal Whitlock, Beaumont	11- 7-27	0906
T. N. Hunt, Beaumont	11-16-27	0873
Bernard F. Smith, Austin	11-21-27	1406

1045 Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana.

Station ..... Date .....

I hereby apply for membership in the Association of Clerical Employees, of the Southern Pacific Lines in Texas and Louisiana and promise to abide by the Constitution and By-Laws thereof.

Dues to be 50c per month, payable in advance. Check enclosed for.....months dues.

I am employed on.....Division, under .....

Department Head or Supt.

.....

Signature of Applicant.

.....

Title of Position Held.

No.....

Oma G. Clough, Dallas	9- 2-27	0085
A. T. Turner, Jr., Dallas	11- 7-27	0923
Horace Cumming, Houston Store ..	10-12-27	1240
B. F. May, Houston Store	10-10-27	0891
Evelyn Kinzer, Houston Store	10-12-27	1236
J. M. Tryon, Jr., Houston Store ...	11- 3-27	0919
Chas. Martin, Houston Shops ...	9- 2-27	0067
E. E. Atkinson, Terminal	9-20-27	1170
W. T. Braunsdorf, Terminal	10-14-27	0935
Henry Freaudenburg, Terminal ...	10-14-27	0942
Edwin Grady, Terminal	10-14-27	0941
J. T. Hill, Terminal	10-10-27	0943
E. A. Kerr, Terminal	8-18-27	1153
A. C. Knight, Terminal	10- 6-27	1219
C. A. Kennelly, Terminal	10- 6-27	1220
L. J. Kelley, Terminal	11- 1-27	0930
C. S. Lipscomb, Terminal	9-16-27	0130
W. O. Sellars, Terminal	10- 6-27	1221
Miss Frances Sodich, Terminal ...	10-18-27	0912
Miss J. Stechmann, Terminal	10-28-27	0911
Geo. A. Spurger, Terminal	10-22-27	0876

Name—Division.	Date Signed.	Card Number.
Mrs. C. M. Townsend, Terminal ...	10-26-27	0936
Kathleen M. Tallon, Terminal ...	10-28-27	0913
C. J. Vichman, Terminal	10-28-27	0915
1044 R. S. Wolfolk, Terminal	9-20-27	1176
J. R. Wacey, Jr., Terminal	9-21-27	1192
A. F. Whatley, Terminal	10- 5-27	1218
F. L. Beissner, Beaumont	9-30-27	0984
Ida Bevil, Beaumont	10- 1-27	0995
P. E. Dupuy, Beaumont	10-27-27	1318
Jas. D. Ford, Beaumont	10-22-27	1315
John L. Fletcher, Beaumont	11- 8-27	0904

The Witness:

I can explain the whole thing to you. We circulated this petition and the clerks you see on that list did not sign the original petition. However, after the Association was recognized they came along and signed an application blank which is in my estimation the same thing authorizing the Association of Clerical Employees to represent them in wage disputes, working conditions, or what not. That is what that list there contains. In other words, that is the additional application signed or the petition signed to the original petition.
1046 Those down there are members of the Association. They signed membership blanks. Some of those who signed the petition are members. When the petition went around, it was not to solicit their membership, it was to get their views on the matter, whether or not they wanted the Association to represent them. The solicitation of memberships did not start until after we were recognized. It would be improper to ask a man to join an Association that had not been formed. This paper is a copy of the Constitution of the Association of Clerical Employees. They are both copies. This was hectographed. I did that myself. We used the hectograph carbon paper to make the original copy on the master copy of the hectograph and in doing that we naturally have to make an original copy on the typewriter and this is what this is here. This is what purports to be the Constitution and By-Laws of the Association.

Defendant thereupon introduced in evidence the document referred to, which is as follows:

EXHIBIT "R-18".

Constitution of "The Association of Clerical Employees of the S. P. Lines in Tex. and La., omitted from the printed record, being heretofore copied at page 145.

* * * * * * * * *

1054 From yesterday until today, or from the time Mr. Ehlinger testified, we have got another increase in membership of the Association, one more coming in this morning. The total membership is now 894; paid up memberships.

On Cross Examination, he testified:

We do not put them out if they don't pay dues unless they get six or eight months behind. We try to arrange to carry them, but we understand the circumstances with a lot of the clerks, they probably have sickness in the family, and we carry them. That is not a local proposition, that is up to me. If I want to carry them, it is up to me. In other words, 894 represents members who have joined our organization and who have paid some dues. Some of them have paid practically all of the dues that have accrued. Some of them have not, varying amounts. I know that each one of the 894 have paid something. They have paid at least one month's dues. All of the number have not paid up each month as I stated just now. Of course this quarter is not over yet. This coming pay day, why we look for them to all pay up. We haven't suspended anybody for non-payment of dues.

1055 On Re-Direct Examination, he testified:

I have a full and complete record of all these men and of their payments, which I can produce at any time. There has been absolutely no beating about the bush about it. Practically all are paid up to date in advance. That is form 1, application for membership in the association. That is used by all of them. All of our members signed that.

Defendant thereupon introduced the form referred to, in evidence:

The Association of Clerical Employees,
Southern Pacific Lines in Texas and Louisiana.

Station..... Date.....

I hereby apply for membership in the Association of Clerical Employees, of the Southern Pacific Lines in Texas and Louisiana and promise to abide by the Constitution and By-Laws thereof.

Dues to be 50c per month, payable in advance. Check enclosed for.....months dues.

I am employed on.....Division, under .....

Department Head or Supt.

.....

Signature of Applicant.

.....

Title of Position Held.

No.....

These 800 members that we have got include those that signed our petition last summer. Those 80 members we offered in evidence here are the ones
1056 that did not sign the petition but did sign application blanks. The 800 include some that signed up last summer and some that did not sign.

With reference to whether I circularized the clerks telling them that we are the ones that could represent them and that the Brotherhood can't: I don't know that I have asserted that the Brotherhood can't. I would assume, however, that the Association has been recognized by the Management of the railroad. I stated that to them, that they had better join up with us because they couldn't do any good with the Brotherhood. As a result of that and with the solicitation in person, I have been getting members right along. After the injunction order was made by the Court, I issued a circular stating that that did not affect the matter at all and that I was sill represented with the Management, because we were not a party to the suit. That it did not make any difference about the injunction, that the Management and I would go on just the same. I don't know whether the Management intended to go on and treat with us just the same and did not intend to recognize the injunction. I don't remember whether I wrote that to the clerks or not. I don't recall just what I said. I know whether or not I have been claiming we still had the authority to represent them with the Management. I still say that we still have. Whether we get into the Management's office or not I could not say, but we are going to endeavor to. It is up to the Management to receive us. I mean that as far as we are concerned we are going to keep building the organization and make it as strong as we can. And
1057 if the Management recognizes us, why, all right.

I don't say that our membership of 894 represents now more than half of the clerks. I could not say whether it is over half or not. It is nearly half anyway, it is

more than one-half. The organization is growing every day. The clerks surely do want our organization to represent them rather than the Brotherhood. If outside interference was kept away, in the event provision was made by the Court to take their evidence either by ballot or otherwise, the clerks would vote for us and not for the Brotherhood. I mean outside interference from the Brotherhood orders. I really do think that the majority of the clerks really prefer our organization to the other. We have had it on August 6th, on August 5th we presented approximately 1,000 authorizations to the Association of Clerical Employees and a secret ballot I think would be doing the whole thing over. If the other brotherhoods' interference was eliminated the Association would have an overwhelming majority, but with the other Brotherhoods interfering, keeping the men from joining, making them afraid of their jobs and so forth, clerks in offices where there might be three clerks in there and two of them belonged to the Brotherhood and one of them did not belong, he would be afraid to join because they would make the work so hard for him, make his life miserable while he is there. We don't intend to make the lives of the Brotherhood men miserable. The Association was not formed on those principles. I can't see anything right that the other side has done so far.

1058 On Re-Direct Examination, he testified:

I do not know it to be a fact that there has been interference in the past. A majority of the agents out on the line belong to the Order of Railway Telegraphers. The Agents at the big stations are generally promoted from the small stations.

On further Cross-Examination, he testified:

In this membership that I am speaking of, those personal office force employees, or a great part of them, are included. I was in the room there when Mr. Nicholson testified but I could not hear very well. I don't recall his testimony about so many here and so many there. With reference to whether or not the membership of our organization is in a general way comparable to the classes of employees and that sort of thing shown by the authorizations which we produced here last summer: You understand, the authorizations we presented, we had truckers on there that were eliminated. I knew of the authorizations which we presented last summer being very carefully analyzed. We spent a couple of days in Court here figuring which should be counted and which should not and so on. With reference to whether the membership of our organization is in a general way comparable with those authorizations: I will tell you, we had quite a few of those authorizations, fellows that authorized the Association to represent them that have not as yet joined the Association due to the fact that the whole thing has been in litigation. They don't want to involve themselves one way or the other. They are just waiting. I had one of them tell me if the railroad company wins out in the suit, we will be with you 100%, but
1059 until the whole thing wins out one way or the other, they are not going to join one way or the other.

On further Direct Examination, he testified:

It was not last night but night before last that I went over this list of authorizations that were presented by the plaintiff to see how many represented men

who had since joined the association. There were one hundred and fifty some odd; (after looking at memorandum) one hundred and fifty-eight. There were one hundred and fifty-eight of the men who signed those authorizations or the so-called questionnaires that were offered by the plaintiff, who have since they signed that become members of the association.

Upon examination by the Court, he testified:

We act for the clerks that don't belong to the association. Just like those who do belong. We are, in effect, just exactly like the Brotherhood except we have formed a local here. There is a difference in the scheme of selection of representatives. The members of the Association elect in their local, a local chairman, and the local chairman on the division or the clerks in all the locals on the division elect a local representative, a division chairman, and the division representatives elect a general chairman and the general secretary-treasurer and the vice-general chairman. We have got locals and things just like they have.

On further Cross-Examination, he testified:

Our rules and working agreement, which our organization undertook to make with the Management early in September is different from the old contracts or agreements of the Brotherhood with respect to who might represent a clerk who had some appeal.

The rules of the organization are not the
1060 same. I don't remember any phase of our by-laws that provides that our organization is precluded from representing a non-member of our organization on some grievance, from representing outsiders.

C. W. DERRINGTON, called as a witness for defendant, and having been duly sworn, testified as follows:

My name is C. W. Derrington. I am chief clerk to the Superintendent of Terminals. I am a member of the Association of Clerical Employees. I am not an officer. I took part in the organization of the association. I was present in the agent's office at Houston here on the occasion testified to by a number of witnesses the other day. Well, I went over there and asked Mr. McDaniel to accompany me for the purpose of acquainting the clerks of that office with what I thought what benefits would follow their lining up with the Association. I realized from my experience and from what I had seen that they could not hope to benefit themselves through the Brotherhood of Railway Clerks and was convinced that they possibly could benefit themselves through the Association of Clerical Employees. I had read a number of circulars put out by the Brotherhood that were misleading and I went over there for the sole purpose of placing our side of the case before them. Neither myself nor anybody else present there said anything about any $75,000.00 increase in pay to be given anybody. I am positive of that. I did not know anything about it. The first I heard of
1061 $75,000.00 was on August 6, 1927. That was not $75,000.00. That was the first date that I heard that any offer of any kind had been made to the clerical employees through the association. On July 11th the Association representative of each division met at the Grand Central Station and elected officers. I was present at that meeting. We then went to Mr. Torian's office to place before him their author-

nations and ask for recognition. He would not consider it. They went back again on August 6th and Mr. Torian was there—first, I am a little off—in the meantime they were recognized and in their negotiations for an increase an offer was made to them which they, I don't think they cared to accept at that time. They tried to raise the ante and did succeed I believe in raising the ante. The increase allowed was $100,000.00. I am the chief clerk for the Superintendent of Houston Terminals, the Terminal Division. I have no authority over the Agent at Houston or elsewhere; nor over the Assistant Agent; nor over anybody employed in the agent's offices. I cannot hire them or discharge them. I do not employ or discharge anybody in the superintendent's office. You might term my situation that of a high class clerk. I am a clerical employee. Eligible to membership in both organizations.

On Cross-Examination, he testified:

My mission early in July was to present the cause of the clerical association to several employees over in the agent's office. That is what McDaniel and I went there to do. I had hoped to get these authorizations signed by as many clerical employees as possible; I and the others associated with me. Having in
1062 mind the presentation of that matter to an individual clerk over in the local freight office, I went and did the things that I did do. Selecting the private office of the agent to do it in. And in the personal presence of the superior officer of the individual employees, who was in the room. McDaniel and myself presented the question to them. With the idea absolutely of leaving it to their free will and judgment

as to what they did. With reference to whether I wanted to influence them or not: I placed the matter before them and tried to explain it and I solicited their membership at that time. I gave them a blank and I asked them to save it and think it over, if they didn't want to sign it at that time, as I thought later they would sign it and send it in. I have held this position since November 1, 1920, under the superintendent. The superintendent is over the agent. He is over the Assistant Agent and everybody in the Agent's office. I do take a great number of actions in the name of the superintendent, write letters and that sort of thing for him. That is correct. If it involves a matter of policy, he personally directs each and everything I do. But other matters not involving policy, routine matters, I do act for him and in his place and stead.

On Re-Direct Examination, he testified:

I don't have to ask him whether I should make request for a new broom or something of that kind, if the old one is worn out. Mr. McDaniel is chief clerk to the General Yardmaster at the Englewood Yards. He has no authority whatsoever at the Houston Freight Station. That fact is generally known to all
1063 those fellows over there. A statement was made by one witness here in testifying, to the effect that I had told him in one of these conversations that I had personally stopped a petition for some betterment of conditions that he and other clerks over there had presented, is false. I could not have done it.

(Counsel for defendant stated that he offered this evidence on the issue of Derrington's authority.)

The Witness:

I might add if you like that it was stopped by the Superintendent. I placed the matter before him. I had nothing whatever to do with it until he passed on it. The Chief Clerks on these lines supervise the Superintendent's office under his direction. The work is done under the direction and authority of the Superintendent. The chief clerk discharges the duties of a chief clerk.

On Re-Cross Examination, he testified:

The part of the conversation that such a petition as this mentioned was presented and came up to me is correct. When I presented it to my superintendent I did not make any representation whatever. It was immaterial to me whether it was granted or not. I don't believe the matter was referred to, in the local office, but I am not positive. I don't recall. I am familiar with what Mr. Crooker calls the contract or agreement which some of them call a set of rules, between the Southern Pacific Lines and the Brotherhood of Railway Clerks, in 1922. With reference to whether or not they are generally applicable to me as to the conditions of pay, vacations and so on: Well, everything that a clerk gets through those, I also get. Those rules
1064 do not apply to me, to my position. It is simply true because of my position and not me personally.

On Re-Direct Examination, he testified:

This is the book of rules.

The defendant thereupon introduced in evidence Rule 896 from the book of rules as follows:

"Agents must not be absent from their station, grant leaves of absence to their subordinates, nor make any change in their forces without permission."

J. C. McDANIEL, called as a witness for defendant, and having been duly sworn, testified as follows:

My name is J. C. McDaniel. I am chief yard clerk for the Southern Pacific at Houston at the Englewood Yards. I have no authority whatsoever over Houston Freight Station or any of the employees or officers therein. I was at one time chief clerk at the station. But I have not been since 1921.

I was present with Mr. Derrington at a meeting with some employees at the freight station in Houston at which Mr. Derrington and I suggested to them or endeavored to persuade them to become members of the Association. Nothing was said about that, no representation made to them by me or either of us that there would be any $75,000.00 distributed in wage increases. The $75,000.00 wage increase was talked among the clerks when I first heard of it; I don't recall just when I heard it the first time. It did not come from me.

1065 I did not ever hear any official of the company say so. It just seemed to be in the air among the clerks. Derrington has no authority over the men in the local agent's office. Chief Clerks generally on the Southern Pacific Lines have no right to employ or discharge. I think the matter is covered by the book of rules about agents anyhow. I was not an officer of the Association at that time. I was an officer of the Association in 1923-24. That was the time of the so-called secret ballot.

Q. Do you know whether any influence was exerted on the clerks by members of other organizations, employees on the lines?

(This question was objected to by complainant on the ground that the 1923 ballot was a little bit early for the issues involved in this case. Which objection was sustained by the Court. To which defendant excepted.)

The Witness:

After that ballot, a protest was filed by me. The protest itself was signed by me, but it was supported later by a petition to the best of my knowledge and belief this is a copy of my protest.

(Defendant thereupon introduced the document referred to, as follows:)

EXHIBIT R-19.

Docket 3489.

Western Union Telegram.

HSA26791 NL 12 EXTRA 1/70.

Houston, Tex. 19

1924 Apr 19 PM 8 11.

L. M. Parker,

1066 Secretary United States Railroad Labor Board,

Transportation Bldg.,

Chicago, Ill.

Understand Management Southern Pacific Lines intends meet Brotherhood Railway Clerks twenty-fifth this month Stop Mailing you formal request with

necessary evidence of right to represent clerical employees for rehearing on decision twenty-one thirty-eight vigorously protesting against recognition of Brotherhood Railway Clerks Stop Request that matter be held in status quo and Management instructed refrain from meeting Brotherhood until we have been given a hearing Stop Request that you advise by wire if request be granted Stop

(S) J. C. McDANIEL,
General Chairman, Association Clerical Employees, Southern Pacific Lines in Texas & Louisiana.

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12265-½
026

EXHIBIT R-19 (Continued.)

Docket 3489.
4-19-24.

Form No. RLB-101.

To the United States Railroad Labor Board:

Your petitioner, J. C. McDaniel, General Chairman of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana, Houston, Texas, avers:

1067 That he represents the following-named organization of employees:

Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

That a dispute, hereinafter set forth, is pending between the party above named and The Southern Pacific Lines in Texas and Louisiana, in which dispute those whom he represents are directly interested.

That the authorized reperesentatives of the above-named parties have conferred and failed to reach an adjustment, and have exerted, and are now exerting every reasonable effort, and have adopted, and are now adopting, every available means to avoid any interruption to the operation of any carrier growing out of the dispute in question; and are not promoting, aiding, or abetting any strike, walkout, or lockout, growing out of said dispute; and that there is no appropriate adjustment board to which this dispute may be submitted.

That rules or an agreement governing wages and working conditions are in effect between the said carrier and its employees interested in this dispute, which are the rules and working conditions laid down by the United States Railroad Labor Board in their decision 630 and signed by representatives of the above-named carrier and of the organization of Brotherhood of Railway and Steamship Clerks on July 1, 1922.

That the facts of the dispute are as set forth in exhibit form (Exhibit A) and attached to this
1068 application.

Petitioner asks that this application be docketed for decision, that the interested parties be duly notified, and that the board instruct the above-named carrier to refrain from any negotiations with the organization of Brotherhood of Railway and Steamship Clerks, holding the matter in status quo, until your petition has been given a rehearing on Decision 2138, and that the board decide this dispute as soon as practicable.

An opportunity for oral presentation is desired.
Signed this 19th day of April, A. D. 1924.

(Signed) J. C. McDANIEL,
General Chairman, Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

EXHIBIT "A."

Statement of Facts.

The dispute arising between the Southern Pacific Lines in Texas and Louisiana and the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana is one of representation.

Exhibits B, C, D, E, F, G, H, J and K attached hereto and made a part of this petition outline the dispute which has arisen between the above-named parties. Exhibit L attached hereto and made a part of this petition is an exact copy of the personal and individual signatures of the clerical employees on the Southern Pacific Lines in Texas and Louisi-
1069 ana (which constitute more than fifty-one per cent of these employees) and indicates that the majority of the clerical employees on the above-named lines desires that they be represented by the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana and not by the organization of the Brotherhood of Railway and Steamship Clerks.

Decision 1971 of the United States Railroad Labor Board decided that the Southern Pacific Lines in Texas and Louisiana acknowledge the organization of the

Brotherhood of Railway and Steamship Clerks as the representatives of the clerical employees of the Southern Pacific Lines in Texas and Louisiana although the secret ballot taken immediately prior to the rendition of Decision 1971 by the United States Labor Board showed that only thirty-seven per cent of the clerical employees on the Southern Pacific Lines in Texas and Louisiana voted for the organization of the Brotherhood of Railway and Steamship Clerks. Decision 2138 of the United States Railroad Labor Board was rendered denying a rehearing of the dispute to the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

Exhibit L attached hereto proves that the majority of the clerical employees of the Southern Pacific Lines in Texas and Louisiana (other than General Office employees) desire a change in representation and have expressed their desire that the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana represent them.

Exhibits B, C, D, E, F, G, H, J and K at-
1070 tached hereto indicate the efforts made by the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana to come to an agreement in this respect with the Southern Pacific Lines in Texas and Louisiana that they may be recognized as the representatives of the clerical employees of these lines.

EXHIBIT "B."

Houston, Texas, February 28, 1924.

Mr. J. G. Torian,
Ass't. to V. P. & G. M.,
Houston, Texas.

Dear Sir:

We have received copy of Decision No. 2138 rendered by the United States Railroad Labor Board, under date of February 21st, 1924, and note the Board declines to order the spreading of a secret ballot for the clerical employees on these Lines (other than Feneral Office Employees) in order that the majority of the employees directly interested may determine by such vote who shall represent them. It has been difficult for us to understand the position of the United States Labor Board endeavoring to force the employees of these Lines to submit to a representation which is not satisfactory to them. I abstract the following from the Board decision No. 2138:

"The Board is of the opinion that no good purpose can be served by repeated elections to determine representation. It believes that once an election is
1071 conducted the result should be abided by until some good reason arises for conducting another, which is not apparent in this case."

It has been repeatedly shown that under the first ballot taken the organization of the Brotherhood of Railway and Steamship Clerks secured a vote of only 37% of the total number of employees affected and we have shown by the authorization from a majority of the clerical employees on these Lines (outside of Genera!

Office) that they do not desire to be represented by the Organization of the Brotherhood of Railway and Steamship Clerks, but have, on the other hand, authorized this Association to represent them. This, to our minds, conclusively shows a reason for the spreading of a ballot. I wish to file, on behalf of the Association of Clerical Employees and as General Chairman thereof, our most emphatic protest against the carrier further recognizing the Committee of the Brotherhood of Railway and Steamship Clerks' Organization as the representatives of the Clerical employees on these Lines. We will file with you in the next few days a formal protest signed by the majority of the clerical employees on these Lines in support of the protest which I am now filing in their behalf and will also file similar protest with the United States Railroad Labor Board.

We have been entirely willing to go along with the views of the Labor Board that these questions should be settled by means of a secret ballot in accordance with the Board's Decisions Nos. 218 and 220, but since the Brotherhood of Railway and Steamship Clerks' Committee refuses to agree to the spreading of
1072 a ballot and Decision No. 2138 of the Labor Board encourages them to persist in such a program, we are compelled to adopt other means to show that we have the right to represent the clerical employees in accordance with Section 301 of the Transportation Act, and having shown that we have such right we must insist upon being allowed to exercise it.

We further wish to make of record the fact that the majority of the clerical employees of these Lines, having authorized this Association to represent them and having renewed that authorization, will not recognize

as binding upon them any rules that may be negotiated by the Organization of the Brotherhood of Railway and Steamship Clerks.

Yours truly,

(Signed) J. C. McDANIEL,
General Chairman, Association of Clerical Employees, S. P. Lines in Texas and Louisiana.

Copy—Mr. L. M. Parker, Secty., United States Rail road Labor Board, Transportation Bldg., Chicago, Ill.

EXHIBIT "C."

Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, March 4, 1924.

Representation of Clerical Employees (Othern than General Office Forces) Labor Board Decision No. 2138.

1073 Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
2024 Chestnut Street,
Houston, Texas.

Dear Sir:

Wish to acknowledge receipt of your letter of February 28th, filing further protest against recognizing the Organization of the Brotherhood of Railway and Steamship Clerks.

I note you state that you will file within the next few days a formal protest signed by the majority of the clerical employees in support of your letter of protest. Anticipating that these documents will be filed

without delay, I wish to advise that the Management will hold the entire matter status quo until the same are received, following which we will advise you as to what further action we will take.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

Cy—Mr. L. M. Parker, Secty., United States Railroad Labor Board, Transportation Building, Chicago, Ills.

EXHIBIT "D."

Houston, Texas, March 12, 1924.

Mr. J. G. Torian,
Asst. to V. P. & G. M., S. P. Lines,
Houston, Texas.

Dear Sir:

In my letter of February 28th, 1924, filing
1074 formal protest against recognition of the Organization of the Brotherhood of Railway and Steamship Clerks, I stated that in support of such protest we would file with you a formal protest signed by the majority of the clerical employees.

You will find enclosed documents containing the individual signatures of a majority of the Clerical Employees formally protesting against recognition of the Organization of the Brotherhood of Railway and Steamship Clerks as the representative of the Clerical Employees on these Lines, authorizing the Committee of the Association of Clerical Employees to act as their representative and insisting upon the Association being recognized as such representative; also withdrawing and

annulling any and all authorization that the organization of the Brotherhood of Railway and Steamship Clerks may hold or claim to hold to represent them.

The employees directly interested certainly have the right to designate their representatives and in view of this definite and specific authorization given to the Association of Clerical Employees, I again ask that the Management name an early date for meeting my committee in conference for the purpose of disposing of all questions that are now pending.

Yours truly,

(Signed) J. C. McDANIEL,
General Chairman, Association of Clerical Employees, S. P. Lines in Texas and Louisiana.

Cy Mr. L. M. Parker, Secty., United States R. R. Labor Board.

1075 EXHIBIT "E."

Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, March 17, 1924.

Representation of Clerical Employees.

Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
2024 Chestnut Street,
Houston, Texas.

Mr. H. W. Harper, General Chairman,
Brotherhood of Railway & Steamship Clerks,
210 Moore Building,
San Antonio, Texas.

Gentlemen:

I enclose copy of our letter of even date to the United States Railroad Labor Board giving formal notice that we will arrange for the spreading of a secret ballot in line with the procedure contained in its Decisions Nos. 218 and 220, for the purpose of determining through this means whether the Association of Clerical Employees represents the majority or whether the Organization of the Brotherhood of Railway and Steamship Clerks represents a majority of the employees directly interested in this dispute on representation.

In order that all of the parties may be represented in arranging for the details covering the spreading of the ballot, you are respectfully requested to attend conference in my office in Houston at 2 P. M., April 1, 1924. I trust you will be agreeable to joining with us in bringing this matter to a definite con-
1076 clusion, but should you decline to do so, the Management will proceed with the spreading of a ballot. Please advise as to whether or not you agree to this procedure, and will be on hand for the conference on the date named.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

GT-s

EXHIBIT "F."

Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, March 28, 1924.

Representation Clerical Employees.

Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
2024 Chestnut Street,
Houston, Texas.

Dear Sir:

I have the following letter from Mr. H. W. Harper, General Chairman of the Brotherhood of Railway and Steamship Clerks, dated San Antonio, March 27th:

"Your letter of March 17th, above subject, was received in this office March 21st and reply thereto has been further delayed account of my extended absence from the office.

"It will be necessary for me to attend hearing, to be held by the United States Railroad Labor Board, April first, in regard to the application of De-
1077 cision No. 2138. For that reason, it will be impossible for me to attend conference to be held in your office April 1st. If it can be arranged to hold the conference in your office after my return from Chicago, our committee will be glad to attend. Please advise and oblige."

In the light of Mr. Harper's request and the hearing before the United States Railroad Labor Board, the conference which was called for April 1, 1924, is hereby postponed.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

2-S

Cy Mr. H. W. Harper, General Chairman, B. of R. C., 210 Moore Building, San Antonio, Texas.

EXHIBIT "G."

Southern Pacific Lines in Texas and Louisiana.

Houston, Texas, April 4, 1924.

Representation of Clerical Employees.

Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
2024 Chestnut Street,
Houston, Texas.

Dear Sir:

Supplementing my letter March 28th in regard to postponement of conference that was requested
1078 for the purpose of making arrangements for spreading a ballot for clerical employees, wish to advise that in view of the action of the United States Railroad Labor Board in declining to authorize or sanction the spreading of a ballot, we desire to follow our practice of observing the decisions of the Board and will not be prepared to join in the spreading of such a ballot at this time.

I trust that on giving the matter proper consideration, you will be in agreement with our view that any further action should be deferred, at least until the expiration of one year from the date of spreading the former ballot on June 15, 1923.

Yours truly,
(Signed) J. G. TORIAN,
Ass't. to V. P. & G. M.

7-s

EXHIBIT "H."

Houston, Texas, April 8th, 1924.

Representation of Clerical Employees.

Mr. J. G. Torian,
Asst. to V. P. & G. M.,
Southern Pacific Lines in Texas and Louisiana,
Houston, Texas.

Dear Sir:

I have your letter of April 4th in which you state that the Management cannot, at this time, meet with my committee for the purpose of spreading a ballot to determine the question of representation, and I desire to call your attention to certain factors in the
1079 case that do not appear to have been given proper consideration, either by the Management or by the United States Railroad Labor Board.

The Transportation Act of 1920 makes it the duty of the Management to confer with the representatives of the employees on all questions in dispute. The act does not require these representatives to be elected by a secret ballot, or for any specific period of time. We have clearly shown by the individual signatures of

the employees directly interested that this Association represents the majority of such employees and in our judgment this is all that the Act contemplates or requires. A secret ballot is not required under the provisions of the Transportation Act and this requirement on the part of the Labor Board tends to make more cumbersome and unwieldy the application of the provisions of the Transportation Act and places technical obstacles in the way of employees in choosing their representation, which is not justified. Under the Transportation Act, the only question that can properly arise before the Management meets and negotiates with my committee is whether or not the auhority presented to you authorizing this committee to represent the employees is authentic and is signed by a majority of the employees who are directly interested. The authenticity of the signatures conveying the authorizations to this committee has not been questioned by the Management, by the United States Railway Labor Board or by the Brotherhoor of Railway Clerks, and the action of the Labor Board, which was agreed to by the Management, deprives the employees of this railroad from securing the representation of their choice.

In its decision No. 119 the United States
1080 Railroad Labor Board sets out certain principles for the guidance of the carriers and their employees, which principles the Labor Board itself should observe. Surely the Board cannot expect to maintain the confidence of the employees and of the management if it does not comply with its own regulations. Principles Nos. 7 and 15 read in part as follows:

"Principle No. 7:

"The right of employees to be consulted prior to a decision of managment adversely affecting their wages or working conditions shall be agreed to by management. The right of participation shall be deemed adequately compled with, if and when the representatives of a majority of the employees of each of the several classes directly affected shall have conferred with the Management."

"Principle No. 15:

"The majority of any craft or class of employee shall have the right to determine what organization shall represent members of such craft or class. * * *"

The Committee of the Association of Clerical Employees on the Southern Pacific Lines in Texas and Louisiana have filed with you the personal and individual signatures of a substantial majority of the employees who are interested in this dispute, authorizing said committee to represent them in negotiations with the Management. The authenticity of these documents has not been questioned and the employees directly interested hold that they are sufficient to secure recog-
1081 nition of the Committee of the Association of Clerical Employees as the authorized representatives of the clerical employees. Notwithstanding the fact that we had established our right to represent these employees, we were willing to go along with the proposal to spread a secret ballot in order to meet all of the requirements that have been set up by the United States Railroad Labor Board, as well as the requirements of the Transportation Act, which we have already met, but in agreeing to do this we assumed, and had the right to assume, that such a ballot would be spread

immediately and would not seriously delay the employees in being represented by the representatives of their choice.

In his letter to you of March 27th, 1924, the General Chairman of the Committee of the Brotherhood of Railway and Steamship Clerks stated that he had to be in Chicago on April 1st and could not join in the conference that had been called for that date for the purpose of arranging for a secret ballot, but that he and his committee would be ready to join in such conference immediately following his return from Chicago. It appeared from this letter that the matter was definitely arranged and that the ballot could be gotten out very shortly, but your letter of April 4th places an entirely different aspect on the matter and it is difficult for the employees and this committee to understand how the position of the management and that of the Labor Board can be reconciled with the provisions of the Transportation Act that directs the Management to confer with the representative of the employees,
1082 or with the principles established by the Labor Board in its Decision No. 119, which provided that the majority of any class had the right to negotiate agreements. The organization of the Brotherhood of Railway and Steamship Clerks cannot by any method or means employed show that they represent the majority of the clerical employees on these lines and the employees keenly feel the injustice of the refusal of the Labor Board and the Management to permit them to be represented by the Association of their choice. We have at heart the best interest of the railroad, by which we are employed, as well as the interest of the employees and we are not seeking to embarrass the Management in any way, but we must enter earnest

and emphatic protest against further delay in this matter and further recognition of the Brotherhood of Railway and Steamship Clerks as the representatives of the employees.

We again point out that any agreement entered into or settlements reached with the Brotherhood of Railway Clerks will not be binding upon the class of employees whom we have the right to represent. This protest will also be filed with the United States Railroad Labor Board.

Yours truly,
(Signed) J. C. McDANIEL,
General Chairman, Association of Clerical Employees, S. P. Lines in Texas and Louisiana.

Cy—Mr. L. M. Parker, Secty., United States Railroad Labor Board, Transportation Building, Chicago, Ills.

1083 EXHIBIT "J."

Houston, Texas, April 9, 1924.

Representation of Clerical Employees.

United States Railroad Labor Board,
Mr. L. M. Parker, Secretary,
Transportation Building,
Chicago, Illinois.

Dear Sir:

On behalf of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana, I filed with the Management of the Lines named a protest against refusal to recognize the committee of said

association and against further recognition of the Committee of the Brotherhood of Railway and Steamship Clerks as the representatives of the Clerical Employees, other than General Office Forces. I am enclosing herewith copy of letters of March 28th, 1924, and April 4th, from the representative of the management which led to the protest being filed. I am also enclosing copy of the protest itself, which was occasioned by the refusal of the management to join in the spreading of a secret ballot to determine representation and is fully justified by the circumstances. The decision not to spread a ballot until some future date which has not been definitely determined, is entirely unsatisfactory to the employees.

We confess our inability to understand the attitude taken in this matter. We have presented to the management the personal signatures of a majority of the employees authorizing our committee to represent them and in so doing we have done more than was
1084 ever done by the Brotherhood of Railroad and Steamship Clerks when they assumed the authority to represent the clerical employees. The Brotherhood of Railway and Steamship Clerks has never been able to secure the signatures of a majority of the clerks on these Lines, authorizing representation by that organization. This filing of authority attested by the individual signatures of a majority of the employees who are interested, should in itself be sufficient to entitle us to immediate recognition under the provisions of the Transportation Act or to the immediate spreading of a ballot. If the United States Railroad Labor Board holds that it has the authority under the Transportation Act to dictate when and how the employees may change their representatives or their form of representa-

tion, it appears that the Board should at least definitely settle the question of how long a time must elapse before a set of representatives can be changed. As we look upon the matter, the mere spreading or not spreading of a ballot is immaterial in this case, the grave question involved being the refusal of the Labor Board to recognize authority signed by a majority of the employees and the refusal of the management to confer or negotiate with the representatives selected by the majority of their clerical employees and who are entitled under the Transportation Act, to such recognition. If such recognition or the spreading of a ballot can be deferred for any given term, it can with equal authority be deferred for a longer term, two years, ten years or any longer period. It is clearly an inference with the right of the employees to select their own repre-
1085 sentatives.

As the matter stands, it appears that the Labor Board, as well as the Management of the Railroad, is in the attitude of refusing recognition to the representatives who have been selected by the employees and who have, under the Transportation Act, the right to represent the employees of their class. We respectfully request the Board to give this matter further consideration and to give us such definite ruling as will enable us to determine our further course.

Yours truly,

(Signed) J. C. McDANIEL,
General Chairman, Association of Clerical Employees.

Cy—Mr. J. G. Torian, Asst. to V. P. & G. M., S. P. Lines in Texas and Louisiana, Houston, Texas.

(Exhibit "L" next attached.)

1086 The Witness:

That petition was supported by over a thousand clerical employees. It was presented with a petition to the Railroad Labor Board. They rendered two decisions. Petition 2138 denied us a rehearing. We were not satisfied. The employees were not satisfied. We have not been satisfied since. I can only speak of the condition of mind of my immediate clerical force because I have been on duty all the time. They are still just like they were in 1923 and 1924. They don't want representation by the Brotherhood of Railway Clerks. That has been a continuous condition.

On Cross-Examination, he testified:

These men I speak of are clerical employees working under Mr. Connor, my immediate superior there in the Englewood office. They work under me too. There are about 75 men, I think, at the present time, working there under me. I control, direct and supervise the work of those men. With reference to whether if I don't want a man there working under me he doesn't stay long: I haven't any authority to discharge a man. He does stay if he performs his work satisfactorily. He does not leave unless I have sufficient cause to recommend his removal. It is not a fact that whenever in my judgment I believe I have sufficient cause to complain about a man's work and I recommend his removal or discharge or change, that it usually happens. It has not happened. I have not discharged a man in 7 years. It would happen if I could satisfy my superior that he was not doing the work properly. I am the fellow my superior puts there to get the work done and supervise it.

1087 'On Re-Direct Examination, he testified:

That is a copy of the original petition or protest signed by me. There is attached to it a copy of the petition addressed to the Board and so forth with copies of signatures and correspondence and files. That is all correct.

(Defendant thereupon introduced the instrument in evidence, as follows:

EXHIBIT R-20.

United States Railroad Labor Board.
608 South Dearborn St.
Chicago, Ills.

Ben W. Hooper, Chairman; Horace Baker, R. M. Barton, J. H. Elliot, E. F. Grable, G. W. W. Hanger, Samuel Higgins, W. L. McMenimen, A. O. Wharton; L. M. Parker, Secretary.

April 25, 1924.
Docket 3489.

Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
Southern Pacific Lines in Texas & Louisiana,
2024 Chestnut Street,
Houston, Texas.

Dear Sir:

1088 In direct reply to your telegram of April 9, 1924, the Board refers you to letter addressed to Mr. G. S. Waid, copy of which was furnished you under date of March 11, and with further reference to the entire subject matter, you will find enclosed copy of the letter received from Mr. Waid,

dated March 29, 1924, with copy of letter and telegram sent to E. H. FitzGerald under date of March 29, 1924.

The Board sees no justification for changing the decision arrived at in this case and no application for a new election can or will be entertained until its decision has been complied with.

By order of the Board.

Yours very truly,

(Signed) L. M. PARKER, (R)

37-045 Secretary.

cc—Mr. G. S. Waid, V. P. & G. M., Southern Pacific Lines in Texas & La., Houston, Texas.

Mr. E. H. Fitzgerald, President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Room 701, B. R. C. Building, Cincinnati, Ohio.

Docket 3489.

Association of Clerical Employees of the Southern Pacific Lines in Texas & Louisiana.

Houston, Texas, May 1, 1924.

1089 Representation of Clerical Employees.

Mr. L. M. Parker, Secty.,
United States Railroad Labor Board,
Transportation Building,
Chicago, Illinois.

Dear Sir:

Wish to acknowledge receipt of your letter of April 25th, Docket 3489, in reply to my wire of April 9th protesting against recognition of the Brotherhood of Rail-

way and Steamship Clerks as the representatives of the Clerical Employees on the Southern Pacific Lines in Texas and Louisiana.

We regret to note that the Labor Board has taken the position that no application for a new election will be entertained until its decision has been complied with. We assume that this refers to negotiations under Decision No. 2138 and we wish to point out that the carrying out of that decision is a matter that rests solely with the representatives of the carrier and those of the Brotherhood of Railway and Steamship Clerks and that in holding the employees, whom we represent, responsible for matters over which we have no control is subjecting us to an injustice that is not compatible with the high standing and the past record of the United States Railroad Labor Board.

We are informed that the representative of the Management has been holding conferences with the Committee of the Brotherhood of Railway and Steamship Clerks on questions of changes in working rules and this, we hold, ignores and is a direct violation of the rights of the clerical employees, the majority of whom have expressed their desire for representation
1090 by our Association. As previously stated, these matters are not within our control and we can only reiterate our protest against such negotiation and against any agreements reached.

12389-2

056

We desire to again call attention to our letter to the Labor Board dated April 9th, 1924, in which we requested that the Board more clearly define its require-

ments on the representation question. As the matter now stands, we have no assurance that our right of representation will ever be recognized through any proper and orderly procedure on our part, and as we desire to put an end to this state of uncertainty, we will very greatly appreciate an early reply, definitely outlining the attitude of the Labor Board on the question of the length of time which must elapse after an election or choice of representation before the employees will be permitted to change such representation or again hold an election and may expect to have such change or the holding of such an election concurred in by the Labor Board.

I trust that you will find it possible and consistent to advise me promptly and fully in this matter and remain,

Yours respectfully,
(Signed) J. C. McDANIEL,
General Chairman.

12389-3

056

United States Railroad Labor Board.

(Same Letterhead as Used on Other Letters of This Exhibit.)

1091 May 6, 1924.
Docket 3489.

Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
Southern Pacific Lines in Texas & Louisiana,
2024 Chestnut Street,
Houston, Texas.

Dear Sir:

Your letter of May 1, 1924, with further reference to representation of clerical employees on the Southern Pacific Lines in Texas and Louisiana, has been received and copy forwarded to Messrs. FitzGerald and Waid for their information and same will be brought to the attention of the Board.

Yours very truly,
(Signed) L. M. PARKER, (R)
Secretary.

37-045.

cc—Mr. E. H. FitzGerald, President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Room 701, B. R. C. Building, Cincinnati, Ohio.

Mr. G. S. W[illegible]d, V. P. & G. M., Southern Pacific Lines in Texas and La., Houston, Texas.

United States Railroad Labor Board,
1092 608 South Dearborn Street,
Chicago, Illinois.

Ben W. Hooper, Chairman; Horace Baker, R. M. Barton, J. H. Elliott, E. F. Grable, G. W. W. Hanger, Samuel Higgins, W. L. McMenimen, A. O. Wharton; L. M. Parker, Secretary.

Docket 3489.
May 10, 1924.

Mr. J. C. McDaniel, General Chairman,
Association of Clerical Employees,
Southern Pacific Lines in Texas & Louisiana,
2024 Chestnut Street,
Houston, Texas.

Dear Sir:

Referring to your letter of the first instant, you are advised that the Board has heretofore clearly defined its position, and until the decision in this case has been complied with, the Board will not entertain any further submissions in connection therewith.

Subsequent to compliance with the decision of the Board the Board will be governed by the provisions of the Transportation Act.

By order of the Board.

Yours very truly,
(Signed) L. M. PARKER,
Secretary.

CC—Mr. E. H. FitzGerald, President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Room 701, B. R. C. Building, Cincinnati, Ohio.

CC—Mr. G. S. Waid, V. P. & G. M., S. P. Lines in Texas and La., Houston, Texas.

1093 The Witness:

I accept the applications of the applicants and pass them on to the superintendent signifying my approval of their employment. I never heard of this $75,000.00 matter mentioned when I was interviewing

these men in July, 1927, these clerks; neither did I hear the $100,000.00 mentioned at that time. With reference to whether or not Armstrong in the freight office was interviewing men prior to my interview with them mentioning $75,000.00 or $100,000.00 without my hearing anything about that amount of money mentioned at all; as I stated before, I had heard it talked among the clerks.

I met B. G. Hudson at the Houston freight house. I did not either directly or indirectly threaten him or intimate that he would be discharged if he did not join the Association. I talked to him. I never asked him to become a member. I asked him if he was a member of the other organization. He said "I don't care to answer that question." That he was a free-born American citizen. That is what he said to me. I did not press the matter with him, I walked away.

On examination by the Court, he testified:

I mean by the statement that all of the men in my office were opposed to the Brotherhood, that
1094 nobody in my office belongs to the Brotherhood. All of them belong to the Association. That has been the case all along since 1923. Hudson is not in my office. My office is right in the yard. Where they are subject to contact with all sorts of Union men. Notwithstanding that, they are for the Association.

On further Cross-Examination, he testified:

The switchmen, all of whom belong to a railroad labor organization practically, and the trainmen, the Big Four, have much greater direct contact with the clerks

in my office than they do down at the local freight station. The clerks at the local freight station, other than the warehouse clerks, have practically no contact with members of what would be called the Big Four brotherhoods, in their work. The warehouse clerks do. There are switchmen working around there, the warehouse, you know. The warehouse men never see the conductors or the engine men or the train men or the brakemen. The negro switchmen do not handle most of the warehouse work. It is the same switchmen that come in contact daily and almost hourly with my men in the Englewood office. In addition, my men have daily contact with the members of the other three railroad brotherhoods.

On examination by the Court, he testified:

I meant, given an expression of their opinion either by ballot or otherwise, would I think all be in favor of the Association.

On Re-Direct Examination, he testified:

With reference to whether out on the line
1095 where one or two clerks are under the order of Railway Telegrapher Agents: During the time I was on the line I found there was lots of opposition. Usually a telegrapher or operator agent belongs to the National Organization and most of those one or two clerk stations, why they belong to the Brotherhood. They are scared not to.

J. D. McCRANEY, called as a witness for the defendant, and having been duly sworn, testified as follows:

My name is J. D. McCraney. I am statistician and railroad clerk in the general offices of the Southern Pacific Lines. Last night I checked over and analyzed this bunch of authorizations in their unreduced form. I made an analysis of that by position, pay and so forth. To the best of my ability that is correct.

(Defendant thereupon introduced the document identified:)

EXHIBIT

1096 EXHIBIT F

Recapitulation of Signatures on Printed Forms Sent Out by the E
Desired a Wage Increase and to Authorize the Brotherhood t
Submitted by the Brotherhood of Railway Clerks Purportin

Division.	Total Signatures. On Printed Forms.	Other Signatures.	Total.	Miscellan Dining Car Dept.	Miscellaneous.
El Paso	55	124	179	..	..
Houston	179	21	200	..	..
Victoria	43	24	67	..	..
Houston Terminals	180	..	180	3	(5)
					(See No
Beaumont	129	52	181	..	..
Lafayette	89	11	100	..	..
New Orleans Terminals	178	..	178	8	..
Dallas	102	16	118	..	..
Austin	43	..	43	..	..
Miscellaneous "76"	76	..	76	..	..
Other Miscellaneous	36	..	36	..	..
Total	1,110	248	1,358	11	5

Note No. 1—(Bill Boy .....
(Bill of Lading Assort
(Freight Bill Assorter
(Claim Recorder .....

1097 The Witness:

Similiarly and a few days before that I made an analysis of these authorizations in their unreduced condition as it was offered here with a little taken out and those that were taken out being those that were subsequently introduced. This other paper is the analysis of it in its reduced form.

(Defendant thereupon introduced into evidence the document identified by the witness, which is as follows):

EXHIBIT R-21.

1096

EXHIBIT R-21 Crt.

R-Crt.

Recapitulation of Signatures on Printed Forms Sent Out by the Brotherhood of Railway Clerks Asking the Employees if They Desired a Wage Increase and to Authorize the Brotherhood to Represent Them and Including Miscellaneous Signatures Submitted by the Brotherhood of Railway Clerks Purporting to be Authorizations for Representations.

Division.	Total Signatures.			Miscellaneous Items, Duplicate Signatures, Etc.,											
	On Printed Forms.	Other Signatures.	Total.	Dining Car Dept.	Miscellaneous.	PBX Oprs.	Messengers and Office Boys.	Not Dated.	Asst. Engr. Acct.	Truckers and Laborers.	Duplicate Signatures.	Secured Subsequent to 7-29-27.	Total Miscellaneous, etc.	Number of Signatures Remaining after eliminating duplicate Signatures, etc.
El Paso	55	124	179	..	..	..	..	9	1	15	19	3	47	132
Houston	179	21	200	..	..	..	1	7	..	3	25	6	42	158
Victoria	43	24	67	..	..	..	..	..	..	2	21	7	30	37
Houston Terminals	180	..	180	3	(5) (See Note 1)	..	..	1	..	..	1	14	24	156
Beaumont	129	52	181	..	..	..	1	18	..	..	38	9	66	115
Lafayette	89	11	100	..	..	..	..	7	..	..	7	4	18	82
New Orleans Terminals	178	..	178	8	..	..	..	3	..	2	2	..	15	163
Dallas	102	16	118	..	..	3	2	13	..	..	7	9	34	84
Austin	43	..	43	..	..	..	..	2	..	..	3	..	5	38
Miscellaneous "76"	76	..	76	..	..	..	2	..	..	..	1	2	5	71
Other Miscellaneous	36	..	36	..	..	..	33	..	..	3	..	..	36	..
Total	1,110	248	1,358	11	5	3	39	60	1	25	124	54	322	1,036

Note No. 1—(Bill Boy ..... 2)
(Bill of Lading Assorter ..... 1)
(Freight Bill Assorter ..... 1)
(Claim Recorder ..... 1)

1097 The Witness:

Similiarly and a few days before that I made an analysis of these authorizations in their unreduced condition as it was offered here with a little taken out and those that were taken out being those that were subsequently introduced. This other paper is the analysis of it in its reduced form.

(Defendant thereupon introduced into evidence the document identified by the witness, which is as follows):

EXHIBIT R-22 Crt.

R-Crt.

Recapitulation of Signatures on Printed Forms Sent Out by the Brotherhood of Railway Clerks Asking the Employees if They Desired a Wage Increase and to Authorize the Brotherhood to Represent Them and Including Miscellaneous Signatures Submitted by the Brotherhood of Railway Clerks Purporting to be Authorizations for Representations.

Division.	Total Signatures.			Miscellaneous Items, Duplicate Signatures, Etc.,									
	On Printed Forms.	Other Signatures.	Total.	Dining Car Dept.	Miscellaneous.	PBX Oprs.	Messengers and Office Boys.	Not Dated.	Asst. Engr. Acct.	Truckers and Laborers.	Duplicate Signatures.	Total Miscellaneous.	Number of Signatures Remaining after eliminating duplicate Signatures, etc.
El Paso	50	101	151	..	..	..	..	3	1	14	1	19	132
Houston	168	..	168	..	..	..	..	7	..	3	1	11	157
Victoria	37	..	37	..	..	..	..	..	..	..	..	..	37
Houston Terminals	164	..	164	3	(5) (See Note 1)	..	..	1	..	..	..	9	155
Beaumont	124	..	124	..	..	..	..	9	..	..	..	9	115
Lafayette	84	..	84	..	..	..	..	2	..	..	..	2	82
New Orleans Terminals	176	..	176	8	..	..	..	2	..	3	2	15	161
Dallas	91	..	91	..	..	3	..	4	..	..	..	7	84
Austin	40	..	40	..	..	..	..	2	..	..	..	2	38
Miscellaneous "76"	73	..	73	..	..	..	..	..	..	..	1	1	72
Other Miscellaneous	36	..	36	..	..	..	34	..	..	2	..	36	..
Total	1,043	101	1,144	11	5	3	34	30	1	22	5	111	1,033

Note No. 1—(Bill Boy ..... 2)
(Bill of Lading Assorter ..... 1)
(Freight Bill Assorter ..... 1)
(Claim Recorder ..... 1)

erhood of Railway Clerks Asking the Employees if They present Them and Including Miscellaneous Signatures be Authorizations for Representations.

Items, Duplicate Signatures, Etc.,

Messengers and Office Boys.	Not Dated.	Asst. Engr. Acct.	Truckers and Laborers.	Duplicate Signatures.	Total Miscellaneous.	Number of Signatures Remaining after eliminating duplicate Signatures, etc.
..	3	1	14	1	19	132
..	7	..	3	1	11	157
..	..	..	..	..	..	37
..	1	..	..	..	9	155
..	9	..	..	..	9	115
..	2	..	..	..	2	82
..	2	..	3	2	15	161
..	4	..	..	..	7	84
..	2	..	..	..	2	38
..	..	..	..	1	1	72
34	..	..	2	..	36	..
34	30	1	22	5	111	1,033

..... 2)
..... 1)
..... 1)
..... 1)

1099 **Summary of Signatures on Printed Forms sent out by the Brotherhood of Railway and Steamship Clerks asking the employees if they desired a Wage Increase and to authorize the Brotherhood of Railway and Steamship Clerks to represent them in endeavoring to mediate such increases:**

Total Signatures—		
On Printed Forms	1,043	
Other Signatures	101	
Total		1,144

Signatures of Classes Objected to by Organization in Connection with Authorizations Given to Association of Clerical Employees, Duplicate Signatures, etc.:

Dining Car Department Employees	11	
PBX Operators	3	
Messengers and Office Boys	34	
Bill Boy	2	
Bill of Lading Assorter	1	
Freight Bill Assorter	1	
Claim Recorder	1	
Assistant Engineer Accountant	1	
Truckers and Laborers	22	
Duplicate Signatures	5	
Signatures not Dated	30	
Total—Signatures of Classes objected to by Organizations in connection with Authorizations given to Association, Duplicate Signatures, etc.		111

1100 **Summary of signatures on printed forms sent out by the Brotherhood of Railway and Steamship Clerks asking the employees if they desired**

a wage increase and to authorize the Brotherhood of Railway and Steamship Clerks to represent them in endeavoring to mediate such increase.

List of signatures of classes of employees to which exception was taken by the Brotherhood of Railway and Steamship Clerks when signatures of the same classes were presented by the Association.

Dining Car Department Employees—

Robert A. Halliday, Houston Dining Car Dept., Assistant Storekeeper.

Leonard Tritico, Houston Dining Car Dept., Linen Man.

Marius Zinanti, Houston Dining Car Dept., Storekeeper.

Harry C. Husser, New Orleans Dining Car Dept., Chief Clerk.

H. J. Becnel, New Orleans Dining Car Dept., Meal Cost Clerk.

Leonce Bourgeois, New Orleans Dining Car Dept., Bill Clerk.

Lloyd Schoen, New Orleans Dining Car Dept., Head Linen Clerk.

Frank J. Cusimano, New Orleans Dining Car Dept., Storekeeper.

Richard H. Flynn, New Orleans Dining Car Dept., Asst. Storekeeper.

Miss Alice A. O'Neil, New Orleans Dining Car Dept., Multigraph Operator.

Mrs. Clara E. Babin, New Orleans Dining Car Dept., Asst. Multigraph Opr.

P. B. X. Operators—

Mrs. Stella Brooks, Dallas Local Office, Chief PBX Operator.

Mrs. Berma Cobb, Dallas Local Office, PBX Operator.

Mrs. Sallie Jackson, Dallas Local Office, PBX Operator.

Messengers and Office Boys—

Elvin Burghardt, New Orleans, Messenger.
Aaron A. Edgecombe, Jr., New Orleans, Messenger.
Harold K. Garic, New Orleans, Messenger.
John LaRocca, New Orleans, Messenger.
Ernest J. Munster, New Orleans, Messenger.
Edward M. Mahan, New Orleans, Messenger.
Noel O'Neil, New Orleans, Messenger.
Robert Partlan, New Orleans, Messenger.
Earl P. Pelegrin, New Orleans, Messeneger.
Thomas K. Salter, New Orleans, Messenger.
W. H. Schnauder, New Orleans, Messenger.
Lloyd L. Senac, New Orleans, Messenger.
Albert R. Traub, New Orleans, Chief Messenger.

1101 Summary of signatures on printed forms sent out by the Brotherhood of Railway and Steamship Clerks asking the employees if they desired a wage increase and to authorize the Brotherhood of Railway and Steamship Clerks to represent them in endeavoring to mediate such increase.

List of signatures of classes of employees to which exception was taken by the Brotherhood of Railway and Steamship Clerks when signatures of the same classes were presented by the Association.

Messengers and Office Boys—Cont'd—

Joseph Verret, New Orleans, Messenger.
Loren J. Alford, Algiers Stores, Messenger.
LeRoy Pietszh, Galveston, Messenger.

Martin Kopinitz, Houston Gen. Shops, Coach Shop Messenger.
Francis Hayes Beacham, Houston Frt. Office, Messenger.
Arnold Crawford, Houston Frt. Office, Messenger.
John Francis, Houston Frt. Office, Messenger.
Joe Rao, Houston Frt. Office, Chief Messenger.
Vernon Rice, Houston Frt. Office, Messenger.
Jno. Stehlig, Houston Frt. Office, Messenger.
Harold C. Carpenter, Houston Frt. Office, Messenger.
John B. Cogswell, Beaumont, Messenger.
N. C. Allshouse, T&NO, Houston, Supt.'s Of., Messenger.
Horace Baker, Yoakum, Messenger.
Roy Harris, San Antonio Frt. Office, Messenger.
Bill Ross, San Antonio, Messenger.
Herman Schneider, San Antonio Frt. Office, Messenger.
Walter Scheer, San Antonio Frt. Office, Messenger.
A. G. Trinkle, San Antonio Frt. Office, Messenger.
G. H. Gillette, Beaumont Frt. Office, Ch. Messenger.
Carl Branner, Beaumont Yard Office, Messenger.

Bill Boys—
Austin Knight, Houston Local Office, Bill Boy.
Edward Dorsh, Houston Local Office, Bill Boy.

Bill of Lading Assorter—
Roy Black, Houston Local Office, Bill of Lading Assorter.

1102 Summary of signatures on printed forms sent out by the Brotherhood of Railway and Steamship Clerks asking the employees if they desired

a wage increase and to authorize the Brotherhood of Railway and Steamship Clerks to represent them in endeavoring to mediate such increase.

List of signatures of classes of employees to which exception was taken by the Brotherhood of Railway and Steamship Clerks when signatures of the same classes were presented by the Association.

Freight Bill Assorter—

Nich Mauro, Houston Local Office, Freight Bill Assorter.

Claim Recorder—

Sam Fasullo, Houston Local Office, Claim Recorder.

Truckers, Laborers, Etc.—

P. Montonez, El Paso Division, Trucker.
G. Muniz, El Paso Division, Trucker.
A. Salcido, El Paso Division, Trucker.
Alejo Alvarado, El Paso Division, Trucker.
J. M. Rubio, El Paso Division, Trucker.
T. Soto, El Paso Division, Trucker.
Carlos Castillo, El Paso Division, Trucker.
Miguel Carrasco, El Paso Division, Trucker.
Nicolas Gonzalez, El Paso Division, Trucker.
B. Salazar, El Paso Division, Trucker.
J. Ramirez, El Paso Division, Trucker.
C. Sanchez, El Paso Division, Trucker.
E. Gutierrez, El Paso Division, Trucker.
Q. Esquivel, El Paso Division, Trucker.
Philip C. Huff, Luling, Texas, Trucker.
P. L. Nelson, Kerrville, Texas, Porter.
L. B. Reitzer, Comfort, Texas, Porter.
Lynn H. Ward, Algiers, Trucker.

A. T. Chandler, New Orleans, Trucker.
John Lowery, New Orleans, Trucker.
R. D. Saenz, Falfurrias, Frt. Handler & Porter.
Lester Cross, Lufkin, Caboose Supplyman.

1103 Summary of signatures on printed forms sent out by the Brotherhood of Railway and Steamship Clerks asking the employees if they desired a wage increase and to authorize the Brotherhood of Railway and Steamship Clerks to represent them in endeavoring to mediate such increase.

List of signatures of classes of employees to which exception was taken by the Brotherhood of Railway and Steamship Clerks when signatures of the same classes were presented by the Association.

Duplicate Signatures—
Roy R. Turner, El Paso-Divn. Engr. Office, M. of W. Clerk.
C. D. Thompson, Weimar, Texas, Utility Clerk.
George R. Ketchman, Algiers Yard Office, Line Clerk.
F. K. Mahler, Algiers Yard Office, Yard Clerk.
J. R. Atkins, Houston, Timekeeper.

Signatures Not Dated—
Paul Howard, Del Rio, Tonnage Clerk.
H. F. Burns, Alpine, Cashier.
V. F. Caulkins, Marathon, Cashier.
I. A. Elkins, Rosenberg, Baggage Man.
T. B. Holway, Yorktown, Freight Clerk.
A. P. Meiners, Richmond, Night Tick. Clk.
Jos. Stanley, Schulenberg, Cashier.
Margie Compton, San Antonio, Asst. Claim Clerk.
Virgil T. Winters, San Antonio Frt. Office, Team Track Clerk.

Miss Ivy Rinn, Yoakum, 477 & 540 Clerk.
R. G. Avriett, Houston Frt. Station, Clerk.
E. S. Foust, Houston, Utility Timekeeper.
T. C. Heiman, Beaumont, Check Clerk.
E. L. Kolb, Beaumont Yard, Yard Clerk.
Victor Lisotta, Beaumont Frt. Office, Utility Clerk.
C. F. McCammon, Beaumont Warehouse, Receiving Clerk.
L. R. Adams, Jacksonville Frt. Office, Chief Clerk & Cashier.
C. F. Kendall, Goose Creek Frt. Office, Warehouse Foreman.
Sam L. Knowles, Goose Creek Frt. Office, Car and Demurrage Clk.
A. J. Pearson, Port Arthur Frt. Office, Warehouse Foreman.
J. C. Burleigh, Lafayette, M. of W. Clerk.
Henry Daigle, Schriever, La., Clerk.
George C. Koffskey, New Orleans, Line Desk Clerk.
Jno. T. Smith, New Orleans Yard Office, Interchange Clerk.

1104 Summary of signatures on printed forms sent out by the Brotherhood of Railway and Steamship Clerks asking the employees if they desired a wage increase and to authorize the Brotherhood of Railway and Steamship Clerks to represent them in endeavoring to mediate such increase.

List of signatures of classes of employees to which exception was taken by the Brotherhood of Railway and Steamship Clerks when signatures of the same classes were presented by the Association.

Signatures Not Dated—Cont'd.

V. J. Muse, Dallas Local Office, Chief Bill Clerk.
J. S. Wilson, Dallas, Produce Clerk.
W. A. Crouch, Corsicana, Warehouse Foreman.
W. E. Ricks, Denison, Yard Clerk.
A. H. Ehrig, Brenham, Check Clerk.
Clarence R. Falke, Lampasas, Relief Clerk.

1105 On Cross-Examination, he testified:

I am employed in Mr. J. G. Torian's office, Southern Pacific Building. I do not recall that there was a large quantity of the by-laws of this so-called company union in my hand which had been mimeographed there. I have seen some copies there. About all I have ever seen is one at a time. I think possibly we may have eight or ten in all but I didn't see that many. Not to know that that is what it was. Maybe I did, but I didn't know that that is what it was.

B. S. HOLLIMON, called as a witness for defendant, and having been duly sworn, testified as follows:

My name is B. S. Hollimon. I am superintendent of the Dallas Division of the Southern Pacific. I have been in that position seven years. I have been with the Southern Pacific 28 years. I started out in the shops at Houston. I started as a junior clerk. I have not during any of this controversy between the Association and the Brotherhood of Railway Clerks with respect to who represented them, or during any supposed controversy between the Company and the Brotherhood, in any way interfered or legged for the association. I did not organize the clerks on my division. I am fairly familiar with who did that on my division, mainly. Mr. Ehlinger brought the matter first to my attention in

1923, I think it was. He presented me with a petition signed by the employees of the division office. That included my own office and that of the accountant downstairs, and made certain requests there, I think, to the effect that I might be of some assistance in get-
1105 ting them classified with the general office clerks. Prior to that, however, some of the employees of the office had asked me if I thought they might accomplish that. They were pleased with the way the general office clerks were getting along with the Company, and apparently displeased with the way that the organization of the Railway Clerks was getting along with the Company, and wanted to get classified with the general office clerks if possible. I made no suggestion to Mr. Ehlinger about it at all. In fact I had never discussed it with him, but later on he presented that petition signed by, I think, every employee in that department, possibly some thirty-five or forty men. Well, I referred it to the Vice-President and General Manager and I think interceded to try to get that done if we could. Mr. Waid handled it and referred it back to me, either directly or through Mr. Torian, I don't remember which. I think it was through Mr. Torian, if I remember right, and said that these men were properly classed with the employees outside of the general office, and that while he regretted inability to classify them with that group, that it was impossible to do so, or words to that effect. Well, at that time I passed it out to Mr. Ehlinger and told him—I think I made a little note on it probably, I don't remember now, I haven't seen the file in two or three years, except Mr. Ehlinger handed it to me the other day as he picked it up off the file desk, and I think there is a memorandum on there, memorandum to Mr. Ehlinger to note

the result of my efforts with the management. Following that Mr. Ehlinger came back to me with
1106 it and sent a note on it, I think, and said how would it do to get all of the clerks on the line? Did I think that the management would pay some attention to them then, and I think I indorsed it, while I was doubtful about the proposition, it might be well to try it. They did try it. They did organize the association. They had the secret ballot,—it is my impression they had a secret ballot. The clerks on my division have not since that time been satisfied with the decision of the Labor Board or with the representation by the Brotherhood of Railway Clerks. I know that. There was dissatisfaction. It has continued, in my talks with employees I have heard it mentioned a good many times continuously since,—well, I might say, since 1920. I did not at Dallas, Texas, on or about June 20th, 1927, say to H. W. Harper, in fact or in substance, that I had gone up there to hold a meeting with the clerical employees. I did not hear Harper's testimony. This transcript of Harper's testimony is false. With reference to what I was up in Dallas for at that time: June 27th, I think was on Monday, on Saturday and Sunday we had moved from our old freight station to the new one, we were having our usual work there of getting started in the new station, and in addition to that we had a large number of business people dropping in and out all day, a sort of an open house, and I was there for the purpose of showing these people about the station, and to assist in any way that I could in their entertainment and getting ourselves established. Mr. Harper, I noticed him first in the office, I think about eleven o'clock in the morning. He was standing in
1107 front of the main entrance, about the cashier's

window. After I had finished with the gentlemen that I was showing about the building, I went over to Mr. Harper and spoke to him, having known him since 1919 when he worked for me at El Paso, and asked him what he was here for. He had a chip on his shoulder,—metaphorically,—and immediately wanted to know was I going to give him the same right that I was giving the other side, I think, to solicit memberships, or to influence employees, or words to that effect, and I told him that we certainly were, however, this was a most inopportune time for him to be about the station, and that I would prefer that he see them during the noon hour, or when they had gotten off of duty. It was my intention to permit him to see them in the station building if he wanted to after hours, or during the noon recess. He made some remark about he would see them in the street, and with that I passed on with the gentleman that was with me, I don't recall who he was, and before I got back a rather heavy rain shower came up, a shower of rain, and when I passed Mr. Harper again he was still standing in the same place, about the cashier's window. I said, "Well, Harper, since it is raining you don't have to meet the boys in the street. You can see them here in the office during the noon hour. I think I said in the lobby. He made some reply which might have been, all right, or something else of that nature. Soon after that, the noon hour arrived and as the clerks left the building he met them as they went out and he addressed each of them and invited them to attend a meeting in a hall that I think was
1108 on Jackson Street, or maybe Commerce, some street in that vicinity. I think now, the best of my recollection, he referred to the Union Labor Temple. That was the last time I saw Mr. Harper in Dal-

las, and that is about all I had to say to him. It is not a fact that I did anything towards getting clerks to authorize the Association to represent them; I don't think there was a thing of that kind said. It is not a fact that I attempted to get authorizations from them.

On Cross-Examination, he testified:

I was not so sure that the Clerical Association, the so-called company union, originated back in 1923 with Mr. Ehlinger. I don't know that. The contest started then for the representation of the clerical employees of the Southern Pacific Lines in Texas and Louisiana. This contest has been active all the time up to the present time. I didn't have sufficient talk with the parties to state, and I don't know whether the contest in 1923 to a greater or less extent was because the Clerical Association and the Railroad Company each and both contended together before the Railroad Labor Board that the Clerical Association was the real and proper and best representative of the Clerical Employees. In a general way I know that, I might have some idea about that, but as to actual handling and contact, I didn't have it. I know that the Railroad Company and its officials, more or less, to a greater or less extent, approved and encouraged the idea of the Clerical Association; I did myself. I approved it. I misunderstood your previous question. I thought you were asking about something else. I approved it and did not make any se-
1109 cret about my approval. I don't know that I gave it any particular encouragement. I put nothing in the way of it. I encouraged it to the extent that I thought proper and appropriate. I very likely expressed a preference for it. Whenever the occasion arose I would express that preference and give such

encouragement as I thought proper and appropriate. I don't recall ever having heard a railroad official speak of it,—I don't know of a single official of these Southern Pacific Lines who disapproved or who discouraged it. On the contrary, to whatever extent my knowledge and information of those things go, they encouraged it and approved it. That was the situation of my mind and the status of the situation generally during whatever conference or conversation occurred between Harper and I. I was very much in favor of the Association at that time. I had not given any consideration to the question of whether or not I as superintendent of the railroad company, had a legal right to feel that way. I thought it was best for the employees and for the railroad company. And continued to so feel that way.

On examination by the Court, he testified:

I did talk to employees of my office and others on the line who mentioned it to me, about joining this association of clerical employees. I understood Mr. Tallichet to ask whether I had influenced anyone to join. If I said I had never even spoken to anybody, I misunderstood the question. Even before Mr. Ehlinger had ever presented me with a petition, employees in my office, and in some instances, some out on the railroad, some out on the line, had brought this ques-
1110 tion up with me about what chances there were for them to get lined up with the general office employees. I can call to mind now a young fellow by the name of Pearce. That was back in 1923. At this later time, in 1927, I did not speak to any of the clerks, except possibly to my chief clerk, did not make any effort to get anybody to join or talk to any of the clerks telling them that I thought it would be a good thing

except those who asked me directly the question. I could not tell you whether that was so in 1927 or not. Probably it was not. It must have been '23. I put it back to 1923 instead of 1927 because I have no recollection of anybody asking me about it in 1927. That is comparatively recent. I could not recall and place my finger on a single man who asked me about it outside of my immediate office force, in 1927. My office force are clerks. I did talk to them about it. I did advise them that I thought it would be best to join. I am certain that I did not talk with Harper about having a right to talk with my clerks and that I would do it. I did not tell Harper that "Hollimon came up and told me he wanted me to get out, that I had a bad influence on the clerks, having me sit around there." I told him exactly what I said. What I have reported here is all that occurred. Mr. Harper's statement, "Mr. Hollimon then stated to me, now if you think that the law prevents me or any other officer of the Railroad from organizing this Association of Clerical Employees, I just want you to know that I have made the other stations on the Dallas Division, trying to influence or persuade these clerks on this division to get into this
1111 Association, and I am here for the same purpose"—is a misrepresentation entirely. I never talked to him at all about what the law prevented me from doing or what it allowed me to do. I have never discussed that with any persons, never inquired about that. With reference to whether if it was called to my attention by anybody whether I had a right to talk with my clerks and advise them what to do or influence them or not, or whether I had ever talked to anybody about it, I never had talked to anybody. I might have at one time had a letter to that effect. I am not sure about that. It

seems to me I did have, possibly some four or five years ago, some communication of that kind, we had a right to talk to any of our employees. I had nothing from Harper, no conversation with him at all. I could not state whether when I advised the clerks that I thought it best to join whether I gave them any reason for it or not. I don't remember. Those that I talked to were generally boys in my own office, and the head timekeeper, Mr. Turner, for instance. Every time he would come to the office he would mention that. He would say, "Well, I think we are going to get a good strong commitee and get some sort of representation from the management, and I said encouraging things to him about it. I do not remember what those things were, what the nature of the encouragement was.

On Direct Examination, he testified further:

If anybody had asked me my opinion about the Association, I would have given them a favorable opinion. If anybody did ask me about it, I did give them a favorable opinion.

1112 On Re-Cross Examination, he testified:

I knew in a general way of Ehlinger's interest and activities in behalf of the so-called company union. When he was absent from the office for almost two weeks there once, and five or six days another time, absent from his normal duties down here in Houston and over the line doing those things, I knew and understood his activities and approved of them. Without my permission and approval he could not have done that. With reference to my feeling in the matter and my approval of it making it possible for him to get out and get the members, or at least possible for him to get a

great many of them that he did get: He knew it was entirely agreeable with me for him to do that work. This man Ehlinger has been in my office as my Chief Clerk for some time. When I'm out on the road he is in charge of my office in a general way. He don't reverse my policies or do things that are disagreeable to me. With reference to whether or not he carries out my policies and does a great many routine matters for me and on my behalf,—he performed the duties of a usual Chief Clerk. You speak of supervision; he handles the routine of the office and the routine correspondence, and will act for me in my absence in some little matter that may come up, but when it gets to the question of discipline or expenditures or things of that kind, he does not act, he always consults somebody else before he does anything, or me. I approved whatever expense accounts he turned in for time consumed in the activities for the company union; I signed every one of them.

1113 I did not question them, I accepted them as they appeared on their face and signed them.

On Re-Direct Examination, he estified:

Ehlinger is not Assistant Superintendent or Vice-Superintendent; he is chief clerk. He acts as chief clerk and discharges the ordinary duties of chief clerk.

Defendant thereupon introduced in evidence personal record of Horace William Harper, Los Angeles, California, dated February 8, 1918, as follows:

EXHIBIT R-23.

1561.

Los Angeles, Cal., Feb. 8th. 8.
..... Horace William Harper .....
..... July 11th. ..... 7.
.....23.....5..... .....9½..... ....136....
.....Light..... .....Dark.....
..... None .....
.....
.....Freight Brakeman.....
....Tucson Division.... .....Transportation.....
.....Southern Pacific Company.....
.....July 11th, 1917..... .....Feb. 6th, 1918.....
.....
.....
..... Satisfactory .....
.....Feb. 6th, 1918.....
.....Discharged.....Violation of Rule G.....
.....

1114 Defendant next introduced in evidence letter from Horace W. Harper, dated El Paso, Texas, August 12, 1919, to W. Wilson, Supt., of the S. P., Tucson, Arizona, as follows:

EXHIBIT R-24.

El Paso, Texas, August 12, 1919.

Mr. W. Wilson,
Supt., S. P.,
Tucson, Arizona.

Dear Sir:

On February 5th, 1918, I was discharged as a brakeman on the Tucson Division for an alleged violation of Rule G. The attending circumstances were very peculiar, in that I was responsible for my own dismissal, although entirely innocent of the offense charged against me.

At that time there were several Harpers employed as brakemen on the division and I was summoned to answer for the offense of another. When the nature of the charge was disclosed to me, I immediately knew that a mistake had been made but made no protest. On the night prior to the investigation, I had received notice to report to the Draft Board and with that in mind, I foolishly imagined that my standing with the S. P. meant but little to me. I was under obligations to the Harper with whose offense I was charged, in that, he had been of material assistance to me during my days as a student brakeman. Seeing an opportunity to help him over a rough spot and thereby return some of his earlier favors to me, I took the responsibility and was discharged.

I was discharged from the Army, December
1115 5th, 1918, as a Second Lieutenant, and would like very much to be reinstated as a brakeman on your Division. My record is clear with the exception of the charge as explained above and I respectfully refer you to Mr. McCrossin and his clerk, Mr. Lloyd, as to the character of my services at Tucson, and I believe that neither will have any objection to my reinstatement.

A full investigation of this case will be appreciated and if you can see fit to reinstate me, I can offer my best services in return.

Respectfully,
HORACE W. HARPER.

Horace W. Harper,
1218 East Boulevard,
El Paso, Texas.

Defendant next introduced into evidence the personal record application of Harper for employment as clerk, as follows:

EXHIBIT R-25 (4 Pages).

PERSONAL RECORD

INSTRUCTIONS All applications for employment, except as noted in next paragraph, must be made in duplicate, by the applicant, in his own handwriting, and sworn to before a Notary Public. The applicant will then report to the Company Surgeon for examination. Section and Construction laborers and such other applicants as are specially exempted by the General Manager will not be required to fill out applications and personal records, and will not be subject to examination.

Examiners will report result of their examination in proper place on this blank in duplicate, and return both copies to employing officer.

A fee of One Dollar will be charged for making such examination and same will be paid by the applicant.

NOTE This application form is not to be filled out and sworn to by the applicant in order to be allowed to enter the service, OR PROBATIVE, provided there is need for his services, and he has passed a satisfactory examination, but it must be distinctly understood that before he can be considered an ACCEPTED employe, the entire record of his examination will be reviewed

APPLICATION FOR EMPLOYMENT AS / PROMOTION TO Clerk

WITH _____ COMPANY

1. Name in full Thos Lee William Harper
2. Have you ever been known by or worked under any other name than your own? No If so, state what name or names were assumed _____ For what companies or persons did you work under such names? _____ Why were such names assumed? _____
3. Date of birth Feb 20 1892 Place of birth Garland Texas
4. Name of wife, if living (if unmarried, so state) Single
Residence _____ Age _____
5. Names and ages of children _____ (Give street and number)
6. Names of father and mother Father Deceased - Mrs. W A Harper Mother
Age of each 47 Residence Royce Texas
Are they dependent upon you for support Partially
7. If unmarried and parents are not living, name and address of nearest relative Mother
8. Names and addresses of any persons dependent on you for support, or to whose support you are contributing. Contributes to support of Mrs W A Harper Mother and D C Harper Brother
9. Give complete record of your service for last ten years, giving every and all employment for each year in regular order down to date. State what railroad experience, if any, you have had giving names of roads, in what capacity employed and length of service on each road. If you have not previously been employed by a railroad company, state by whom, when, how and where employed.

NAME OF RAILROAD OR OTHER EMPLOYER	WHAT WAS DUTY OF WORK EMPLOYED	NAME OF STATE	PRESENT ADDRESS OF OPERATOR	WHAT WAS YOUR OCCUPATION	WHEN YOU ENTERED THIS SERVICE	WHEN YOU LEFT THIS SERVICE
Pub School		Garland Texas	Artesia N Mex	Student	1908	1910
Artesia Light Power Co		Artesia	Artesia N Mex	Engineer	1910	1912
Pecos & Northern		El Paso Tex	El Paso	Clerk	10-1912	3-1917
U S Reclamation Service		Carlsbad	Carlsbad N Mex	"	4-3-17	6-1-17
Southern Pacific		Tucson	Tucson	Fireman	7-12-17	2-2-18

10. Have you ever been injured? If so, how often, when and at what place? No
How did each injury or injuries occur? _____
Extent of injuries? _____
11. Do you use intoxicating liquors? No If so, to what extent? _____

ADDITIONAL QUESTIONS TO BE ANSWERED BY CANDIDATE FOR EMPLOYMENT

12. If employed at present, by whom? Section of Engineering
No _____ Street _____ Town or City _____ State of _____
In what capacity are you employed? _____

13. If not employed at present, why did you leave your last place? Resigned

14. Have you ever been in the employ of this Company before? If so, state how often, when, in what capacity, on what Division and cause of leaving. No

Did you then hand in personal record? X X

15. Have you ever before made application for employment and been subjected to a physical examination? If so, how often, when July 12, 1917 where Fort Bliss Texas and by whom was examination made? A P Ferguson

Were you accepted or rejected? accepted

16. Have you ever before been discharged or suspended from any situation? If so, how often? State particulars when and where: Discharged from Battery Mail Room for alleged misdemeanors resulting from blood corruption and ill

17. Have you ever employed or been represented by an attorney in connection with any claim or suit for damages against a railroad, or street car company or other employer? If so, state fully all facts pertaining to such claim or suit and give the name and address of the attorney and the disposition made of the claim or suit. No

18. My hearing is Good and eyesight Good and I am

I hereby authorize this Company and its officers and the officers of any other company, person or firm by whom I have been employed or may be employed by any other persons, to answer and ask any or all inquiries as to my conduct and qualifications while in such service and as far as they may know, the cause of my leaving the same.

In consideration of my employment by said Company, I further agree that whenever I shall sustain any personal injury while in the service of said Company, I will allow its surgeons and any medical examiners it may select to examine my person and body as often as the Company may deem necessary in respect to the alleged injury, and I hereby waive all objection to such surgeons or medical examiners testifying whenever called upon by the Company, and I further agree that my refusal to allow any such examination to be made or to permit to be given shall be a bar to the institution or prosecution of any action on account of such injuries, and any action pending at the time of such refusal shall at once abate in consequence thereof. Should I apply to the Company for treatment in case of injury, the same shall be under the regulations now existing or as hereafter amended of the Hospital Department to be set forth in application for Surgical Aid, Company's surgeons, Station Agents, or at Company's hospitals and I agree to sign all papers therewith.

It is understood that my employment is temporary, permanent employment contingent on satisfactory reference from employers.

NOTE: Following acknowledgment and agreement applies only to applicants for service in OPERATING DEPARTMENT.

I hereby acknowledge receipt of a copy of the rules and regulations for the government of employes of the operating department of this Company, and all amendments thereto, and also a copy of the current time table, and agree to familiarize myself with the same and to be governed by such rules and regulations as may be hereafter made, and have had experience in the duties and service of the position for which I am employed.

19.

Sign full name here (No initials) Horace William Harper

STATE OF Texas

COUNTY OF El Paso

I, Horace William Harper being first duly sworn on oath say that I am the applicant named in the foregoing application for employment, that I have carefully read over all of the foregoing questions and answers and that all of the answers to the said questions were made and written by me and state the truth, the whole truth and nothing but the truth upon the subjects inquired about, and the same application has been signed by me in the presence of the notary before whom this affidavit is made.

Horace William Harper

(Full name must be signed here)

Subscribed and sworn to before me by the said Horace William Harper in the town or city of El Paso County of El Paso, State of Texas this the 13 day of Feb 1918

Alice Jones

Notary Public in and for said County and State

ADDITIONAL QUESTIONS TO BE ANSWERED BY CANDIDATE FOR PROMOTION

20. Date of entering this Company's service

21. Present position

22. What previous examinations have you been subjected to and what were the results?

Sign full name here (no initials)

Witness

My present address is

Dated at this day of 191

Educational Test Record

To be made by Employing Officer

Of candidate for

as Division

He is a graduate of having taken the course

He attended school years, studied

advancing as follows

In reading, writing, and arithmetic and knowledge of the language used in rules he is qualified for the position sought

In general mental characteristics and bearing he is

(Signature)

Examiner.

Physical Test Record

(To be brought before Examiner)

No.

Of Howard Hudson — Age 25 — candidate for [illegible]

at Pecos — State [illegible]

Height 5 ft 9 in. Weight 146 lbs. Eyes Gray Hair Brown Complexion Ruddy Race [illegible]

NOTE—Applicants for commission as Engineer or Coastwise and applicants for commission as signal, operator, quarter Engineering, Radio Inspection, Supervising Inspection, Local Inspection, Inspection of Hulls, Inspection of Boilers, Inspection of Equipment, Supervising Special Agent, Special Agent, Chief Clerk, Assistant Chief Clerk, Chief Engineer, Assistant Chief Engineer, Chief Inspector, Assistant Chief Inspector, Chief Examiner, Assistant Chief Examiner, Chief Clerk, Assistant Chief Clerk, and such other applicants as may be designated by proper official will report in examination in Par. 1 and 11 only.

DISTANCE VISION

WITHOUT GLASSES	WITH GLASSES
Right Eye 20 / 20 Left Eye 20 / 20	Right Eye 20 Left Eye 20

READING VISION

WITHOUT GLASSES	WITH GLASSES
Right Eye 20 Left Eye 20	Right Eye Left Eye

2d TEST—COLOR PERCEPTION

Test Skeins submitted	If Skeins are correctly selected to match test skeins, write "Correct," state "Wrongly" or "Doubtful" in proper line, observing also the numbers of skeins selected.
A. Green	Correct Prompt
B. Red	Correct Prompt
C. Red	Correct Prompt
D. Blue	—

WOOL TEST

If all lights or shapes are correctly named, write "Correct" across space for reporting business lens; otherwise write letter of word from in all lights or shapes.

LANTERN TEST

Testing 1 eye at a time — Both eyes	Size of opening	WHITE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		RED																		
		WHITE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		RED																		
Testing 1 eye at a time — One eye	Size of opening	WHITE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		RED																		
		WHITE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		RED																		

3d TEST—HEARING

	Right Ear	Left Ear
Number of feet at which numbers or words can be repeated correctly when spoken in a conversational tone.	20 feet	20 feet
Number of feet at which watch ascertained can be heard, and tick noted.	—	—

NOTE—All applicants are subject to examination by 3d test, but actual employes are exempt.

4TH TEST—GENERAL PHYSICAL EXAMINATION

Rate of Pulse 74 per min. of Respiration 16 per min. Temperature 98 4

Has he had Smallpox? No or been vaccinated? Yes When? 1908

Has applicant ever been or is he now the subject of disease of lungs? No heart? No stomach? No bowels, including rectum? No kidneys? No genito-urinary organs? No nervous system? No skin? No

Is he the subject of any deformity from injury or otherwise? No

Has he any present source of disability in hands and arms? No feet and legs? No spine? No

If deformity or disability is due to injury, how, when and where received? —

Has he hernia? No what form? — Present condition of same? —

Has he hydrocele? No what — Varicocele? No what —

What other diseases has he suffered from and when? Measles, mumps, whooping cough during child hood

Is his appearance that of a temperate man? Yes

He is physically a { first class / average / deputies } subject for position as Clerk

Is he accepted, rejected or reported (when in doubt refer to Chief Surgeon giving No. of test)? Accepted

Do you know that the man you examined is in fact the applicant? Yes State how he identified himself, if not personally known to you. By hand writing

Signature E. V. Robertson Jr. M. D.

Examined at El Paso, Texas Date Feb 15 1911

REMARKS

EXAMINATION

47894 No. 9956

DIVISION EL PASO

Name Horace William Humphreys Age 25

Occupation Clerk

Hired or Promoted by _____ Date 2-15-18

Previous Experience _____

No. of inquiries as to record _____

Educational Test, Date _____ By _____ %

Technical Examination } Date _____ By _____ %

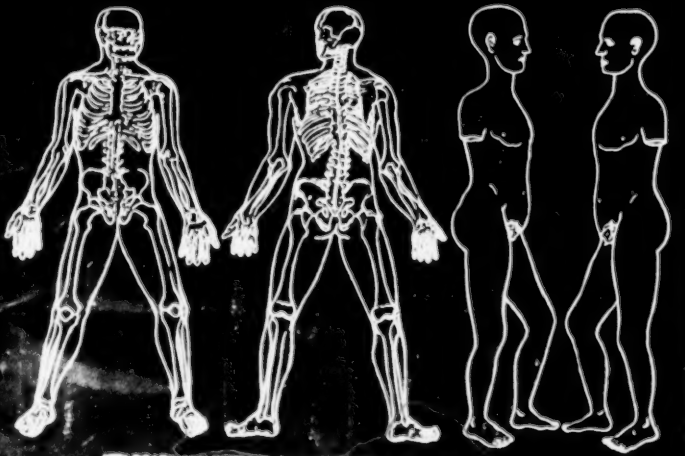
Special Air Brake Exam. } Date _____ By _____ %

Time Card Examination } Date _____ By _____ %

Trial Trip, Date _____

Seniority, Date _____ Date _____

Approved _____



IMPLICATE ANY DEFECTS OR DEFORMITIES ON THE ABOVE DIAGRAMS.

1117 Complainants thereupon introduced in evidence additional authorizations to the Brotherhood, being 84 in number, and being signed by other clerical employees of the Texas and New Orleans Railroad Company than those who had signed the authorizations to the Brotherhood previously offered in evidence herein. Said authorizations were in the same form, or substantially so, as the authorizations annexed to the affidavit of C. W. Derrington, set forth herein at page 18.

Complainants next introduced into evidence the following extract from the agreement as to the 1923 secret ballot signed by J. G. Torian, J. C. McDaniel and Ralph King—who was Harper's predecessor:

"In all previous cases where disputes of this character have arisen and have been referred to the United States Railroad Labor Board, that Board has ordered that a secret ballot be taken."

Defendant thereupon introduced in evidence the whole of the document, as follows:

EXHIBIT C-68.

Houston, Texas, June 15, 1923.

Name.....

Occupation.....

Address.....

Dear Sir:

A part of the clerical employees (other than General Office force) having, through their Committee, served notice on the Management of these Lines of their desire to be represented by a committee of employees from the

Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana, instead of by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, there has arisen a dispute as to whom the Management should recognize as the duly authorized Committee representing this class of employees on the Southern Pacific Lines in Texas and Louisiana.

In all previous cases where disputes of this character have arisen and have been referred to the United States Railroad Labor Board, that Board has ordered that a secret ballot be taken.

In order to avoid delay and to enable this matter to be disposed of as satisfactorily and expeditiously as possible it has been decided that a secret ballot will be spread to enable the employees to promptly express their choice of representation and thereby obviate the necessity of referring the dispute to the Labor Board.

This ballot will be handled in line with the following instructions:

(a) All clerical employees will be entitled to vote and the term "Clerical Employees" as used in this letter is understood to include clerical workers, machine operators, and the other office and station employees such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, (other than porters or truckers), train and engine crew callers, operators of office or station appliances or devices, telephone switchboard operators and other employees filling similar positions in offices. It will not include such positions as elevator operators, office, station and warehouse watchmen and janitors, office, station or baggage porters, red caps, freight handlers, truckers, stevedores or laborers.

A list of the clerical employees who are eligible to vote has been placed in the hands of a representative of the carrier, a representative of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and in the hands of a representative of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

It is agreed that you are eligible to vote and you will find a blank ballot enclosed. This ballot is to be filled out and returned in two envelopes as follows:

The first and outside envelope must be addressed to—

A. W. YOUNG,
Brazos Hotel,
Houston, Texas,

and must have the name and address of the writer written with pen and ink in the upper left-hand corner. The ballot will be enclosed in the second envelope and this envelope should be left blank. Both envelopes should be carefully sealed before mailing. In order to insure proper handling your ballot should be forwarded by United States mail to

A. W. YOUNG,

who has been selected as official custodian of the ballot, and whose address has been shown above. The ballot will be closed June 30, 1923, and the vote of any of the eligible voters that does not show on the outside envelope a postoffice date earlier than July 1st, 1923, will not be counted.

1120

Mr. Young will hold all of the ballots intact and at 10 A. M. on July 3rd, 1923, will deliver them at Room 402, Southern Pacific Building, Houston, Texas, to a representative of the Management, a representative of the

Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and a representative of the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana. Immediately following delivery of the ballots they will be canvassed by the above representatives, the canvas being conducted in the following manner:

(a) The name of each voter as shown in his own handwriting in the upper left-hand corner of the outside envelope, will be checked against the agreed list of authorized voters. The total number of authorized ballots will be counted and the outside envelope will then be removed and destroyed.

(b) The blank envelopes containing the ballots will then be opened and the ballots counted.

(c) In counting the ballots the blank envelope and the ballot contained therein, will be handled in such a manner as to eliminate possibility of identification of the voter.

(d) A report declaring the result of the ballot will be made in quadruplicate and signed by the authorized representatives referred to above; one copy of this report to be retained by each representative and the fourth copy to be forwarded to the United States Railroad Labor Board.

1121 The foregoing understanding and agreement was reached in conference between J. G. Torian, representing the Carriers, Ralph J. King, representing the Brotherhood of Railway and Steamship

Clerks, Freight Handlers, Express and Station Employees and J. C. McDaniel, Chairman of the Committee, representing the Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

RALPH J. KING,
General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

J. C. McDANIEL,
General Chairman, Association of Clerical Employees of the Southern Pacific Lines in Texas and Louisiana.

J. G. TORIAN,
Assistant to Vice-President and General Manager Southern Pacific Line in Texas and Louisiana.

Defendants thereupon introduced the following affidavit of D. D. Wade, dated March 30th, 1928:

My name is D. D. Wade. I am the same D. D. Wade who has heretofore testified in this case. I am Secretary-Treasurer of the Association of Clerical Employees, Southern Pacific Lines in Texas and Louisiana. I have carefully examined all the authorizations filed in this proceeding by the Brotherhood of Railway and Steamship Clerks, the total number of same being 1,358. Upon such check and examination I have found that 172 of said total number have, subsequent to August 6, 1927, and subsequent to the dates of their authorizations above referred to, become members of the Association of Clerical Employees and are still such members in good standing.

1122

This affidavit is intended to supplement my previous testimony that of the signers of authorizations originally filed 158 had subsequently become members of the Association. Said 158 are included in the 172 hereinbefore referred to.

(Signed) D. D. WADE.

Sworn to and subscribed before me on this, the 30th day of March, A. D. 1928.

(Signed) O. G. KEHRER,
Notary Public in and for Harris County, Texas.

1123 We agree that the foregoing, including photostat exhibits inserted therein, contains a true, complete and properly prepared statement under Equity Rule 75 of the evidence adduced at the hearings of the above numbered and entitled cause.

FULBRIGHT, CROOKER & FREEMAN,
CARL G. STEARNS,
Solicitors for Complainants.
C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for Defendants.

The foregoing, including photostat exhibits inserted therein, is approved as a true, complete and properly prepared statement under Equity Rule 75 of the evidence adduced at the hearings of above numbered and entitled cause and it is ordered that those parts thereof in question and answer form be so embodied in said statement

of the evidence in the exact words of the witnesses, and it is further ordered that said statement of the evidence be filed in the Clerk's office on this date and that it shall thereupon become a part of the record herein for purposes of the appeal.

July 13th, 1928.

J. C. HUTCHESON, JR.,
District Judge.

1124 PETITION FOR APPEAL.

Filed July 13, 1928.

(Title Omitted.)

To the Honorable J. C. Hutcheson, Jr., Judge of the District Court of the United States for the Southern District of Texas:

The respondents, Texas & New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian, feeling themselves aggrieved by the interlocutory decree made and entered in this cause on the 11th day of February, A. D. 1928, holding and finding said defendants guilty of contempt of this Court in violating the temporary injunction heretofore entered herein, by the order and decree made and entered in this cause on the 19th day of April, A. D. 1928, overruling respondents motion to dissolve said temporary injunction and to modify the same, and said interlocutory decree of February 11th, A. D. 1928, and by the final decree made and entered therein on the 19th day of April, A. D. 1928, do hereby appeal from said orders and judgments and decrees to the Circuit Court of Appeals of the United States for the Fifth Circuit for the reasons specified in their assignment of errors, which is filed herewith

and they pray that their appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers, upon which said orders, judgments and decrees are based, duly authenticated, may be transmitted to the Honorable Circuit Court of Appeals of the United States for the Fifth Circuit, sitting at New Orleans, Louisiana.

And your petitioners, desiring to supersede the execution of the orders and decrees hereby tender
1125 bond in such amount as the Court may require for such purpose and pray that with the allowance of the appeal a supersedeas be issued; and in any event your petitioners pray that the proper order touching the security to be required of them to perfect their appeal, be made.

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for said Respondent.

1126 ORDER ALLOWING APPEAL AND DENYING SUPERSEDEAS.

Filed July 13, 1928.

(Title Omitted.)

On consideration of the petition for appeal of the respondents Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian, this day filed herein, the appeal prayed for in open Court is allowed upon giving cost bond with sufficient sureties, conditioned as required by law in the sum of Five Hundred Dollars ($500.00).

Supersedeas prayed for, is denied.

Done at Houston, Texas, this 13th day of July, A. D. 1928.

J. C. HUTCHESON, JR.,
Judge.

1127 BOND ON APPEAL.

Filed July 13, 1928.

(Title Omitted.)

Cost Bond.

Know all men by these presents: That we, Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian, respondents in the above entitled and numbered cause, as principals, and United States Fidelity and Guaranty Company as sureties, acknowledge ourselves held and firmly bound unto Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, H. W. Harper, A. R. Campbell, B. G. Hudson, R. R. Stotzer and John C. Moulin, complainants therein, their attorneys, successors, administrators, executors or assigns, in the just and full amount of Five Hundred Dollars ($500.00) lawful money of the United States, to the payment of which well and truly to be made we hereby bind ourselves and our successors, heirs, assigns, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of July, A. D. 1928.

Whereas, the above named, Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G.

Torian have prosecuted an appeal to the Circuit Court of Appeals of the United States for the Fifth Circuit to reverse the orders, judgments and decrees rendered in the above entitled and numbered cause on the 11th day of February, A. D. 1928, and on the 19th day of April, A. D. 1928, by the District Court of the United States for the Southern District of Texas.

Now, therefore, the condition of this obligation is such that if the above named Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and
1128 John G. Torian, shall prosecute said appeal to effect and answer all costs if they fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

TEXAS AND NEW ORLEANS RAILROAD COMPANY,
H. M. LULL, G. S. WAID and JOHN G. TORIAN,
By C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Principal, Their Attorneys of Record,

(Seal) UNITED STATES FIDELITY & GUARANTY CO.,
By IRMA W. HAUCK,
Atty. in Fact, Sureties.

Approved this July 13, 1928.

Attest:
(Seal) L. C. MASTERSON, Clerk,
By J. L. SEXTON, Deputy.

1129 ## ASSIGNMENT OF ERRORS.

Filed July 13, 1928.

(Title Omitted.)

And now come Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, and John G. Torian, appellants in the above numbered and entitled cause, and in connection with and at the time of filing their petition for appeal in said cause assign the following errors, which they and each of them aver occurred on the hearings and trial thereof in the District Court of the United States for the Southern District of Texas and upon which they and each of them rely to reverse the interlocutory and final judgments entered herein as appears of record, and because of each and all of which they pray that said judgments be reversed, and that a proper order and decree on the record be entered:

1. The Court erred in overruling respondents' motion to dismiss and strike out the information alleging contempt filed herein because the same presents no cause of action or ground of complaint against them, or any of them, and wholly fails to allege any facts showing or tending to show that they, or any of them, have been guilty of contempt of Court with respect to the temporary injunction entered herein.

1130 2. The Court erred in overruling respondents' motion to strike out Subdivision I of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

3. The Court erred in overruling respondents' motion to strike out Subdivision II of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

4. The Court erred in overruling respondents' motion to strike out Subdivision III of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

5. The Court erred in overruling respondents' motion to strike out Subdivision IV of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

6. The Court erred in overruling respondents' motion to strike out Subdivision V of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

7. The Court erred in overruling respondents' motion to strike out Subdivision VI of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

8. The Court erred in overruling respondents' motion to strike out Subdivision VII of the information alleging contempt because the acts therein alleged do not constitute any violation of the temporary injunction.

9. The Court erred in overruling respondents' motion to strike out Subdivision VIII of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

1131 10. The Court erred in overruling respondents' motion to strike out Subdivision IX of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

11. The Court erred in overruling respondents' motion to strike out Subdivision X of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

12. The Court erred in overruling respondents' motion to strike out Subdivision XI of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

13. The Court erred in overruling respondents' motion to strke out Subdivision XII of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction.

14. The Court erred in overuling respondents' motion to strike out Subdivision XIII of the information alleging contempt because the acts therein alleged do not constitute violation of the temporary injunction, and further because the allegations thereof are so vague and indefinite that they constitute no allegation of any definite or material fact whatsoever.

15. The Court erred in holding respondents in contempt as set forth in the interlocutory decree of the Court because the temporary injunction entered herein on August 3, 1927, is beyond the power of the Court and void.

16. The Court erred in holding the respondents in contempt because the said order and decree in general terms enjoined and restrained the respondents from interfering, influencing, intimidating or coercing their employees in the matter of selecting representatives and in the matter of the self government of said clerks, and no act or thing done by the respondents or either of them since the making and entering of said temporary injunction and restraining order, was in violation of
1132 the terms of said decree, but each and all of the things done by the respondents, and which the Court has now ordered the respondents to undo were none of them in violation of said injunction or restraining order, but were all consistent with the observance thereof, and were acts and things done within the rights of the respondents.

17. The Court erred in holding the respondents in contempt of said injunction and restraining order, because the Court made no finding of a violation of said order in any specified particular or respect, but made a general finding of a violation of said order, whereas, if in fact said injunction had been violated by respondents, a specific finding of each particular violation of such order should have been made by the Court, to the end that each and all of said respondents might have been advised as to the specific thing done by each of them which the Court found was in disobedience of said order.

18. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Completely disestablish the Association of Clerical Employees as it is now constituted as the recognized representative of the clerical employees of the Texas and New Orleans Railroad Company in the State of Texas and Louisiana;"

because the Court was without power to require the doing of this thing and the acts of the respondents in recognizing and dealing with the Clerks' Association was not a violation of the temporary injunction and restraining order heretofore issued in this case, but was the exercise of a valid legal right resting in respondents.

19. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

1133 "Cease to permit officers and representatives of said Association to organize, promote, manage and attend to the business of said Association, or any organization of said clerical employees hereafter formed, on the said Texas and New Orleans Railroad Company's time and pay, and at its expense and under the aegis of the authority of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, unless a similar privilege is accorded to the officers and representatives of complainant Brotherhood;"

because said acts were not in violation of said injunction but were done in the exercise of rights resting in the respondents and the Court was without power to require respondents to accord to the representatives of the Brotherhood the same treatment they might elect to accord to the representatives of the Association.

20. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Reinstate and reestablish the said complainant Brotherhood as the representative of said clerical employees in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this Court, and without dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Wald and J. G. Torian, shall choose another representative or representatives;"

because the acts done by the respondents were not in violation of the Court's injunction, and because the respondents cannot lawfully be required to reinstate the Brotherhood as representative of its employees, the Railway Labor Act expressly conferring upon the Railroad Company as the employer, the power and right to deal with any employee or group of employees with reference to wages, conditions of service, etc., by contract or otherwise, and it does not compel the respondents to enter into contracts or agreements, or even to recognize any particular representatives or groups of persons as authorized to act for or represent an entire class of employees contrary to the wishes of all or any
1134 part of said class of employees.

21. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Reinstate and reestablish the said complainants Brotherhood as the representative of said clerical employes in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employees by a secret ballot taken in accordance with the further directions of this Court, and without the dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, shall choose another representative or representatives;"

because the Court is without power by its order and decree through a contempt proceeding or otherwise, to order and direct the respondents to recognize or deal with a particular group, through the Brotherhood or representatives of the Brotherhood, concerning wages or conditions of service, etc., for any particular or specified period of time, and no act of Congress nor any other law confers upon a majority of any class of employees the right to act for all of such employees of such class, irrespective of the wishes of some of such class of employees who desire to be represented in some other manner.

22. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Reinstate and reestablish the said complainant, Brotherhood, as the representative of said clerical employes in all matters relating to their employment by said Texas and New Orleans Railroad Company, disputes

as to pay, working conditions, et cetera, substantially as said status was on June 1, 1927, until such time as said clerical employes by a secret ballot taken in accordance with the further directions of this Court, and without the dictation or interference of said Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and J. G. Torian, shall choose another representative or representatives;"

because the Court has not the power, through contempt proceedings or otherwise, to order or direct a whole class of employees to hold an election by secret ballot or otherwise, to determine either questions of policy
1135 or representation or the designation of any particular organization or group of individuals to represent them in negotiations, dealings or contracts with the employer railroad company.

23. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Restore H. W. Harper and John W. Walker to the service of said Texas and New Orleans Railroad Company without prejudice and without loss of seniority rights;"

because the Court has not the power and authority through contempt proceedings or otherwise to compel the respondents to place H. W. Harper and John W. Walker on the roster of employees of the Texas and New Orleans Railroad Company, nor, as neither of them were in the service of the said Railroad Company on June 1st, 1927, can the respondents be required to re-

store them to service. No contract relation of any kind existed between the respondents and said Harper and Walker and the most that can be said is that as a matter of grace, while the said Harper had been out of the respondents Railroad Company's employ for four years or more and the said Walker had been out of the employ of the respondent Railroad Company two years or more, their names had been permitted to remain on the roster of employees, yet, this created no contract right nor any other character of obligation enforcible through the Courts in any character of proceeding compel the continuation of their names on such roster or roll of employees.

24. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Restore to said H. W. Harper and John W. Walker the pass privileges over the lines of Texas and New Orleans Railroad Company which they enjoyed prior to August 6, 1927;"

1136 because the pass privileges heretofore enjoyed by the said Harper and the said Walker were gratuities and not based upon any contractual right or obligation, and the Courts are without power, through contempt proceedings or otherwise, to require respondent Railroad Company to continue a gratuity or act of grace theretofore inuring to the benefit of said Harper and Walker; but the transportation of persons over respondents' lines of railway is a source of revenue for which it is entitled, under the law, to charge, and any order or decree of Court, through a contempt proceeding

or otherwise, requiring said Railroad Company to extend free transportation privileges to one not entitled thereto as a matter of law or by contract right, is a deprivation of its property without due process of law, and violative of the rights of the respondent guaranteed to it under the Constitution and Laws of the United States.

25. The Court erred in holding the respondents in contempt and requiring said respondents as a purging of said contempt to:

"Restore R. E. Stotzer, B. G. Hudson and Charles Ginsburg to the service as employes of said Texas and New Orleans Railroad Company without prejudice and without loss of seniority rights, and make whole said Stotzer, Hudson and Ginsburg for any losses of pay they have sustained by reason of their discharge in violation of the temporary injunction herein, and in contempt of this Court;"

because there is no law which requires the respondent Railroad Company to retain in its employ any particular person, and it has the inalienable right of selecting and retaining in its employ only such persons as it may choose to so select, employ and retain, and the respondent had the right to discharge said Stotzer, Hudson and Ginsburg for cause, or without cause so long as it violated no contract existing between it and them, and
1137 no such contract obligation is averred in the pleadings or found by the Court to exist as a fact. The respondent cannot lawfully be compelled to restore to service, or to continue in its service, or to accept as an employee any person contrary to its own wishes or inclination or contract rights, and in ordering

Stotzer, Hudson and Ginsburg restored to service, and in ordering the respondent Railroad Company to make whole to them any losses of pay they had sustained, the Court has exceeded its power and authority. The things required to be done by the respondents as set forth in said subdivision 6 of the Court's decree of February 11th, contravene the constitutional rights of said respondents and constitute a deprivation of their property and property rights without due process of law.

26. The Court erred in holding the respondents in contempt requiring said respondents as a purging of said contempt to:

"Pay all costs of Court accrued in connection with this contempt proceeding, and further pay to Fulbright, Crooker & Freeman, as attorneys for the complainants herein, the sum of Two Thousand Dollars ($2,000) which is allowed to said complainants herein to cover reasonable and necessary attorney fees and expenses herein in connection with these contempt proceedings;"

because there has not been an infraction or disobedience on the part of the respondents of the Court's temporary injunction or restraining order and said respondents have not been guilty of contempt of this Court, nor disobeyed the orders of this Court, so as to create any liability on the part of the respondents, or either of them to the complainants for any costs of Court or any attorneys' fees or other expenses incident to the prosecution of this proceeding, in that the respondents in the doing of the things which the Court has held or found to be a violation of its decree, and therefore, as being a contempt and disobedience of its order, were all mat-

ters and things which were done in good faith
1138 and with no intention of violating the decrees and orders of this Court, and in the exercise of legal and constitutional rights of these respondents.

27. The Court erred in requiring the defendants to pay the sum of $2,000.00 to Fulbright, Crooker & Freeman as costs and expenses incurred by the complainants in the contempt proceeding because the order directing and requiring this to be done is in excess of the discretionary power of the Court in such matters and in abuse of such discretionary power, and there is no basis of pleading or fact in this record to support such order or such allowance.

28. The Court erred in ordering, directing and requiring respondents not to recognize but to disestablish the Association of Clerical Employees, because the respondents and representatives of said Association of Clerical Employees heretofore entered into contracts and agreements relating to wages and conditions of service, each acting in good faith and not in intended violation, or violation, of this Court's orders and decrees, but in the exercise of constitutional and statutory rights and powers, and such contracts and agreements cannot be destroyed by an order of this Court without a hearing with all of the interested contractual parties before the Court, nor without due process of the law of the land.

29. The Court erred in holding the respondents in contempt because of the discharge of Stotzer, Hudson and Ginsburg because the evidence in this case shows that each of said persons were discharged for cause, as

the employer had a right to do, the facts, conditions and circumstances surrounding the discharge of each of said employees having been fully shown by such evidence, and further because the proof in this case shows affirmatively that neither of the defendants, Lull, Waid or Torian, had any part in the discharge of the said employees, it appearing from such evidence that their respective
1139 discharges were upon orders from the superintendents of their respective divisions without consultation, conference or reference to the said defendants and, so far as this record discloses, without knowledge on the part of said defendants of any activity on the part of said three employees in the Brotherhood of Clerks and because the evidence in this case shows that said employees were not discharged on account of their membership or interest in the Brotherhood of Clerks, nor because of any activity on their part in this controversy.

30. The Court erred in holding respondent Texas and New Orleans Railroad Company in contempt because such holding is not supported by, but is contrary to, the evidence.

31. The Court erred in holding respondent H. M. Lull in contempt because such holding is not supported by, but is contrary to, the evidence.

32. The Court erred in holding respondent G. S. Waid in contempt because such holding is not supported by, but is contrary to, the evidence.

33. The Court erred in holding respondent J. G. Torian in contempt because such holding is not supported by, but is contrary to, the evidence.

34. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order heretofore entered herein because the Court is without power to grant a temporary injunction or restraining order in this cause, because there is now power conferred upon the Court go grant such injunction by any statutory provision of the United States, nor do complainants bring themselves within any settled or customary rules of practice in Courts of equity authorizing and empowering Courts to grant such temporary injunction or restraining order.

1140 35. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order heretofore entered herein because the Court is without power to grant a temporary injunction or restraining order in this cause, because neither the Railway Labor Act in itself, nor any law enacted by Congress, nor any custom or recognized rules of equity Courts contemplate or permit the issuance of temporary injunctions or restraining orders in controversies between an employer such as the defendant Railroad Company is, and employees such as the complainants are.

36. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order heretofore entered herein because the Court is without power to grant a temporary injunction or restraining order in this cause, because the Railway Labor Act, under the terms of which the Court has apparently granted the temporary injunction and restraining order, is self executing and self operating, and under its terms and provisions it is manifest that the Court has no power

by injunction or by any other means, to direct, command or interfere with the activities and negotiations of the employer on the one hand and the employees on the other, in the matters covered by said Railway Labor Act.

37. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order heretofore entered herein because the Court is without power to grant a temporary injunction or restraining order in this cause, because it is the manifest intention of the Congress of the United States, as evidenced by the Railway Labor Act and the provisions of Section 52, Chapter 29 of the United States Code, to prevent and to prohibit the issuance of injunctions and other coercive orders and decrees in controversies and disputes between employees such as the complainants are and employers such as the defendants are.

1141 38. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause, because the complainants' bill of complaint and the exhibits attached thereto and made a part thereof are insufficient as a matter of law to invoke the equitable powers and jurisdictions of this Court, or to authorize this Court to grant the equitable relief prayed for and to issue its temporary injunction and restraining order as has been done in this case, it appearing therefrom that no property rights of the complainants are involved and no irreparable damage would be sustained by said complainants if said injunction were to be denied or dissolved. That as reflected by the complainants' bill of complaint, the controversy was

one between two rival claimants for recognition by the Railroad Company to represent employees of the class described in said bill of complaint, and that such recognition could confer no benefits or property rights on the complainants, it appearing from the terms of the Railway Labor Act itself that each successive step to the adjustment board, to the mediation board and on to arbitration, depended upon the voluntary acts of the parties, and that no power, authority or right is conferred by said Act upon the representatives of any class of employees to compel the employer, the Railroad Company, to grant any demand or to make any kind of agreement, and as the recognition of any one group of persons over another group of persons could clothe them with no power or authority nor create any rights in them to compel the employer, Railroad Company, to any particular course of action, the designation or recognition of any such group, or the failure of the employer, Railroad Company, to recognize or designate any particular group as representatives of the class, could not in law affect any property right or inflict irreparable damage
1142 or injury upon the complainants.

39. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant, Railroad Company, and its executive officers have the inherent and constitutional right to converse and communicate with the employees of such Railroad Company and to express to such employees the wish of the employer, and to direct such employees as to the desires and purposes of such employer in the conduct of the employer's business in the line of such

employees' relation to the employer. That any act of Congress or order of Court which prevents or tends to prevent the free exercise on the part of the employer of such rights, contravenes the inherent rights of the employer and the rights of such employer granted to it under the terms of the Constitution of the United States. That if the Act of Congress under which the Court is acting attempts or purports to confer any such power as the Court is asserting, then it is an unconstitutional interference with the right of free speech, or free communication between employer and employee and a deprivation of property and property rights without due process of law.

40. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant Railroad Company and its executive officers have the right to seek to influence their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods, and as to any other matter or conduct which may tend to affect their loyalty, their
1143 efficiency or their capacity to properly discharge the duties of their employment.

41. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant Railroad Company and its executive officers have the right to interfere with their em-

ployees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

42. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause, because the defendant Railroad Company and its executive officers have the right to coerce their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

43. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause, because no allegation of any paragraph of complainants' bill of complaint, nor all of the allegations contained in the bill of complaint, taken as a whole, allege a cause of action for the extraordinary relief sought by the complainants herein in that it appears therefrom
1144 that no statutory right or right created by law or by any rule of equity exists in the com-

plainants, nor any statutory duty nor any duty imposed by law or by equity upon the respondents, has been violated, or is threatened with violation.

44. The Court erred in overruling respondents' motion to dissolve the temporary injunction and restraining order because the Court is without power to grant a temporary injunction or restraining order in this cause because the proof introduced upon the hearing of the application for the temporary writ of injunction does not establish a cause of action for the extraordinary relief sought by the complainants herein, in that it appears therefrom that no statutory right or right created by law or by any rule of equity exists in the complainants, nor any statutory duty, nor any duty imposed by law or by equity upon the respondents has been violated, or is threatened with violation.

45. The Court erred in overruling respondents' motion to modify the temporary injunction by authorizing and permitting the defendants to recognize and deal with the Association of Clerical Employees as the recognized representatives of the Clerical Employees of the Texas and New Orleans Railroad Company in the States of Texas and Louisiana.

46. The Court erred in overruling respondents' motion to modify the temporary injunction by authorizing and permitting the defendants to deal with its clerical employees individually and by a group or groups represented by individuals or members of the Association of Clerical Employees and other such agencies and means, agree upon settlement of disputes and adjust same by contract and agreement as they may mutually establish in accordance with the provisions of the second subdivision of Section 3 of the Railway Labor Act.

1143 47. The Court erred in overruling respondents' motion to modify the temporary injunction so as to permit officers and representatives of the Association of Clerical Employees of the defendant Railroad Company to organze, promote, manage and attend to the business of said Association or any organization of said clerical employees hereafter formed, on the time and pay of the said Texas and New Orleans Railroad Company and at its expense and under its authority and the authority of its executive officers and without the defendant being required to extend a similar privilege to the officers and representatives of the complainants herein.

48. The Court erred in overruling respondents' motion to modify the temporary injunction so as not to require the defendants to reinstate and reestablish the complainant Brotherhood as the representative of the defendants Clerical Employees in all matters relating to their employment by the Railroad Company, disputes as to pay, working conditions, etc., substantially as the status was on June 1st, 1927, but that defendants be left free to recognize said Brotherhood as it may see fit.

49. The Court erred in overruling respondents' motion to modify the temporary injunction so as not to require the holding of a secret ballot by the Clerical Employees of the defendant Railroad Company under the direction of this Court or otherwise, for the purpose of determining representative or representatives of such class of employees.

50. The Court erred in overruling respondents' motion to modify the temporary injunction so as not to require the defendants to restore H. W. Harper and John W.

Walker to the service of said Railroad Company, or to their positions on the roster of employees of said Railroad Company without prejudice and without losses of seniority rights, but that the defendant be left free to remove the names of such employees who are not now and have not been for several years past in
1146 the active service of the defendant, from the roster of employees of the defendant Railroad Company.

51. The Court erred in overruling respondents' motion to modify the temporary injunction so as not to require the Railroad Company to restore R. E. Stotzer, B. G. Hudson and Charles Ginsburg to the service of the defendant Texas and New Orleans Railroad Company under any conditions, not to require their restoration to such service without prejudice and without loss of seniority rights and that said defendants be not required to make whole said Stotzer, Hudson and Ginsburg for any losses or pay they may have sustained by reason of their discharge from the service of the Railroad Company, and that such injunction be modified, construed and interpreted as permitting the defendants to discharge from the service of said Railroad Company any employee in its service for cause satisfactory to said Railroad Company or its executive officers; the modification of said injunction herein sought being essential for the proper conduct of the public service the defendant is required to perform, and essential to the preservation of discipline in the conduct of both its private and public business.

52. The Court erred in overruling respondents' motion to modify the temporary injunction so as not to require the defendants to give to H. W. Harper and John

W. Walker free passes over and upon the lines of railroad of Texas and New Orleans Railroad Company, because said persons have no contract right or other right thereto, and the issuance of free transportation is a matter of grace. That in requiring such passes to be issued to said Harper and Walker the defendant Railroad Company will be, and is deprived of its property and property rights without due process of law.

1147 53. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because there is no power conferred upon the Court to grant such injunction by any statutory provision of the United States, nor do complainants bring themselves within any settled or customary rules of practice in Courts of equity authorizing and empowering Courts to grant such injunction.

54. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of

selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because neither the Railway Labor Act in itself, nor any law enacted by Congress, nor any custom or recognized rules of equity Courts contemplate or permit the issuance of injunctions in controversies between an employer such as the respondent Railroad Company is, and employees such as the complainants are.

1148 55. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because the Railway Labor Act, under the terms of which the Court has apparently granted the injunction is self executing and self operating, and under its terms and provisions it is manifest that the Court has no power by injunction or by any other means, to direct, command or interfere with the activities and negotiations of the employer on the one hand and the employees on the other, in the matters covered by said Railway Labor Act.

56. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents and employees having and exercising

executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because it is the manifest intention of the Congress of the United States, as evidenced by the Railway Labor Act and the provisions of Section 52, Chapter 29 of the United States Code, to prevent and to prohibit the issuance of injunctions and other coercive orders and decrees in controversies
1149 and disputes between employees such as the complainants are and employers such as the defendants are.

57. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because the complainants' amended bill of complaint and the exhibits attached thereto and made a part thereof are insufficient as a matter of law to invoke the equitable powers and jurisdictions of this Court, or to authorize this Court to grant the equitable relief prayed for and to issue its injunction as has been done in this case, it appearing therefrom that no property rights of the complainants

are involved and no irreparable damage would be sustained by said complainants if said injunction were denied. That as reflected by the complainants' amended bill of complaint, the controversy was one between two rival claimants for recognition by the Railroad Company to represent employees of the class described in said amended bill of complaint, and that such recognition could confer no benefits or property rights on the complainants, it appearing from the terms of the Railway Labor Act itself that in each successive step to the adjustment board, to the mediation board and on to arbitration, depended upon the voluntary acts of the parties, and that no power, authority or right is conferred by said Act upon the representative of
1150 any class of employees to compel the employer, the Railroad Company, to grant any demand or to make any kind of agreement, and as the recognition of any one group of persons over another group of persons could clothe them with no power or authority nor create any rights in them to compel the employer, Railroad Company, to any particular course of action, the designation or recognition of any such group, or the failure of the employer, Railroad Company, to recognize or designate any particular group as representatives of the class, could not in law effect any property right or inflict irreparable damage or injury upon the complainants.

58. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the

complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because the respondent, Railroad Company, and its executive officers have the inherent and constitutional right to converse and communicate with the employees of such Railroad Company and to express to such employees the wish of the employer, and to direct such employees as to the desires and purposes of such employer in the conduct of the employer's business in the line of such employees' relation to the employer. That any act of Congress or order of Court which prevents or tends to prevent the free exercise on the part of the employer of such rights, contravenes the inherent rights of the employer and the rights of such employer granted to it under the terms of the Constitution of the United States. That if the Act of Congress
1151 under which the Court has acted attempts or purports to confer any such power as the Court has asserted, then it an unconstitutional interference with the right of free speech, or free communication between employer and employee and a deprivation of property and property rights without due process of law.

59. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said de-

cree set forth because the Court is without power to grant an injunction in this cause, because the respondent Railroad Company and its executive officers have the right to seek to influence their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

60. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the
1152 right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because the respondent Railroad Company and its executive officers have the right to interfere with their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

61. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because the respondent Railroad Company and its executive officers have the right to coerce their employees in all matters relating to their employment, their relations to the employer, their attitude towards the employer and the officers and agents of such employer, their attitude, as well as their relations to organizations, unions and brotherhoods and as to any other matter or conduct which may tend to affect their loyalty, their efficiency or their capacity to properly discharge the duties of their employment.

1153 62. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause, because no allegation or any paragraph of complainants' amended bill of

complaint, nor all of the allegations therein contained, taken as a whole, allege a cause of action for the extraordinary relief sought by and granted to the complainants herein in that it appears therefrom that no statutory right or right created by law or by any rule of equity exists in the complainants, nor any statutory duty nor any duty imposed by law or by equity upon the respondents, has been violated, or is threatened with violation.

63. The Court erred in ordering and decreeing the temporary injunction herein perpetual and permanent and in enjoining the defendant Railroad Company, its officers, agents, and employees having and exercising executive, directory or supervisory powers from in any way or manner interfering with, intimidating, or coercing the complainants or any of the clerical employees of said Railroad Company with respect to the right of selecting and designating representatives as in said decree set forth because the Court is without power to grant an injunction in this cause because the proof introduced does not establish a cause of action for the extraordinary relief sought by and granted the complainants herein, in that it appears therefrom that no statutory right or right created by law or by any rule of equity exists in the complainants, nor any statutory
1154 duty, nor any duty imposed by law or by equity upon the respondents has been violated, or is threatened with violation.

64. The Court erred in enjoining the defendant Railroad Company, its officers, agents and employees from interfering with the complainants or any of the clerical employees of the said Railroad Company in the respects set forth in said decree.

65. The Court erred in enjoining the defendant Railroad Company, its officers, agents and employees from influencing the complainants or any of the clerical employees of the said Railroad Company in the respects set forth in said decree.

66. The Court erred in enjoining the defendant Railroad Company, its officers, agents and employees from intimidating the complainants or any of the clerical employees of the said Railroad Company in the respects set forth in said decree.

67. The Court erred in enjoining the defendant Railroad Company, its officers, agents and employees from coercing the complainants or any of the clerical employees of the said Railroad Company in the respects set forth in said decree.

68. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 1 of respondents' said motion.

69. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 2 of respondents' said motion.

1155 70. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 3 of respondents' said motion.

71. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 4 of respondents' said motion.

72. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 5 of respondents' said motion.

73. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 6 of respondents' said motion.

74. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 7 of respondents' said motion.

75. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 8 of respondents' said motion.

76. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 9 of respondents' said motion.

1156 77. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 10 of respondents' said motion.

78. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 11 of respondents' said motion.

79. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint for the reasons set forth in paragraph 12 of respondents' said motion.

80. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 1 of paragraph 13 of said motion.

81. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 2 of paragraph 13 of said motion.

83. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of

complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 3 of paragraph 13 of said motion.

1157 84. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 4 of paragraph 13 of said motion.

85. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 5 of paragraph 13 of said motion.

86. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 6 of paragraph 13 of said motion.

87. The Court erred in overruling respondents' first amended motion to dismiss and strike out the bill of complaint as made applicable to the amended bill of complaint with respect to those parts of said amended bill of complaint described in and for the reasons set forth in subparagraph 7 of paragraph 13 of said motion.

88. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 1 of said motion.

89. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 2 of said motion.

1158 90. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 3 of said motion.

91. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 4 of said motion.

92. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 5 of said motion.

93. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 6 of said motion.

94. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 7 of said motion.

95. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 8 of said motion.

96. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 9 of said motion.

97. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 10 of said motion.

1159 98. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 11 of said motion.

99. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 12 of said motion.

100. The Court erred in overruling respondents' supplemental motion to dismiss and strike out complainants' amended bill of complaint for the reasons set forth in paragraph 13 of said motion.

101. The Court erred in overruling respondents' application and petition for a supersedeas on their appeal herein.

Wherefore, the appellants (respondents in the District Court) pray that said decrees be reversed and that said United States District Court for the Southern District of Texas be ordered to enter such decree in this behalf as may be right and proper.

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for Appellants.

1160 PRAYER FOR REVERSAL.

Filed July 13, 1928.

(Title Omitted.)

To the Honorable Circuit Court of Appeals of the United States for the Fifth Circuit:

And now come Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian, the appellants and pray for a reversal of the orders, judgments and decrees of the District Court of the United States for the Southern District of Texas made and entered on the 11th day of February and the 19th day of April, 1928, in the action brought by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, H. W. Harper, A. R. Campbell, B. G. Hudson, R. E. Stotzer and John C. Moulin, complainants against Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian, respondents.

C. R. WHARTON,
C. L. CARTER,
J. H. TALLICHET,
C. B. GARWOOD,
Solicitors for Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian.

1161 CLERK'S CERTIFICATE.

United States of America,
Southern District of Texas,

I, L. C. MASTERSON, Clerk of the District Court of the United States for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record, assignments of error and all proceedings had in the case, as called for in the Praecipe for Transcript on pages 1, 2 and 3 of said Transcript in case No. 314 on the Equity Docket of said Court, entitled

Brotherhood of Railway and Steamship Clerks, etc., et al,
vs.
Texas and New Orleans Railroad Company, et al.

as the same now appears on file and of record in my office.

To certify which, witness my hand and seal of said Court at Houston in said District this the 19th day of July, A. D. 1928.

(Seal) L. C. MASTERSON, Clerk,
United States District Court,
Southern District of Texas.
By S. F. CUNNINGHAM, Deputy.

Minute entry of argument and submission Jan. 21, 1929, omitted in printing.

(File endorsement omitted)

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5406

TEXAS & NEW ORLEANS RAILROAD COMPANY et als., Appellants,

versus

BROTHERHOOD OF RAILROAD AND STEAMSHIP CLERKS, ETC., Appellees

STATEMENT OF WALKER B. SPENCER IN RESPECT OF A QUESTION ASKED DURING ORAL ARGUMENT—Filed Jan. 30, 1929

The attention of the undersigned has been called to articles in certain newspapers published in Houston, Texas, evidently emanating from Mr. John H. Crocker, of counsel for appellees, to the effect that the undersigned, in reply to a question by Judge Foster, admitted that the Act of 1926 was constitutional. If counsel for appellants got such an impression, it is possible that the Court may likewise have done so. I was not aware that my answer to the question could have conveyed any such impression, and it was certainly not my intention to convey it, for in our main brief we argued somewhat at length the question of the constitutionality of the Act as interpreted and applied by the lower court, and I had no intention of receding from that position. My recollection of the incident is that I was arguing the proposition that it was not the intention of Congress to make any part of the Act compulsory or justiciable, as evidenced principally by the fact that the ultimate object of the Act was arbitration, and that being by the very terms of the Act non-compulsory, it could not be presumed that mere preliminary steps were intended by it to be compulsory or justiciable. At this stage of the argument Judge Foster asked whether Congress could have

made the provisions of the Act compulsory. My answer was not direct, but was in substance that it might be conceded that Congress had such power, but in point of fact Congress had not done so, nor had evidenced any intention or desire so to do. By that I meant the power might be conceded for the sake of argument, not that in fact I did concede it, which I had no intention to do—certainly not as the Act was interpreted and applied by the lower court.

Walker B. Spencer, of Counsel for Appellants.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 5406

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Appellants,

versus

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, ETC., et al., Appellees

Appeal from the District Court of the United States for the Southern District of Texas

J. H. Tallichet, C. R. Wharton, C. L. Carter, W. B. Spencer and Victor Leovy, (Walker B. Spencer, Victor Leovy, C. R. Wharton, C. L. Carter, J. H. Tallichet, Calvin B. Garwood and Jno. P. Bullington on the brief), for appellants.

Carl G. Stearns, John H. Crooker and Donald R. Richberg, (Donald R. Richberg, Fulbright, Crooker & Freeman, John H. Crooker, Carl G. Stearns and T. H. Cody on the brief), for Appellees.

Before Walker, Bryan and Foster, Circuit Judges

OPINION—Filed June 10th, 1929

WALKER, Circuit Judge:

The original bill in equity in this case was filed on July 25, 1927, by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Southern Pacific Lines in Texas and Louisiana, (herein referred to as The Brotherhood), a voluntary association

consisting solely of railway clerks in the employ in the States of Texas and Louisiana of the Texas and New Orleans Railroad Company, (herein called the Railroad Company), and H. W. Harper, in behalf of themselves and others of the class composed of railway clerks in the employ of the Railroad Company in the States of Texas and Louisiana, against the Railroad Company and named officers and agents of it. By an amendment of the bill the Railroad Company became the sole party defendant. The bills contained allegations to the following effect: Since its organization in September, 1918, the Brotherhood has been authorized by a majority of the railway clerks in the employ of the Railroad Company to represent them in all matters relating to their employment, and that representation was recognized by the Railroad Company in dealings between it and such railway clerks before and after the beginning of a controversy as to wages between the Railroad Company and such clerks, following the application of such clerks, made in November, 1925, by the Brotherhood as their representative, for an increase of wages, and after the denial of that application by the Railroad Company, and the reference of that controversy by the Brotherhood to the United States Board of Mediation. While that controversy was pending before that Board, the Railroad Company undertook, instigated and encouraged the formation of a so-called "Company Union" of railway clerks in the employ of the Railroad Company, to be known as "the Association of Clerical Employees—Southern Pacific Lines," (herein called the Association), and through the Railroad Company's named general officers and agents having and exercising supervisory and directory powers over members of the Brotherhood endeavored in ways stated to influence, intimidate and coerce members of the Brotherhood to withdraw from it and to make the Association their representative in dealings with the Railroad Company in all matters relating to their employment, and by such means to prevent the railway clerks in the employ of the Railroad Company in Louisiana and Texas from freely, and without interference, influence or coercion, designating, by collective action, their representative in dealings with the Railroad Company in reference to their employment. Pursuant to the prayer of the bill, and after a hearing following the issuance and service of a notice to show cause, the

court, on August 3, 1927, issued a temporary injunction which ordered:

"That the defendant Texas and New Orleans Railroad Company (a corporation and common carrier owning, leasing, and operating certain railroads throughout the States of Texas and Louisiana), its officers, servants, and agents are hereby enjoined and restrained from in any way or manner interfering with, influencing, intimidating, or coercing plaintiffs or any of the approximately seventeen hundred clerical employees (and being the clerical employees described and referred to in plaintiffs' petition, which includes approximately seventeen hundred railroad clerks in the employ of the defendant Railroad Company on its lines throughout the States of Texas and Louisiana, except such clerical employees as are employed and engaged in its general office in the City of Houston, Texas, and in its general office in the City of New Orleans, Louisiana), with respect to their free and untrammeled right of selecting or designating their representatives for the purpose of considering and deciding any and all disputes between said clerical employees and the defendant Railroad Company; and further enjoining and restraining said defendant Railroad Company, its officers, servants, and agents from in any way or manner interfering with, influencing, intimidating, or coercing plaintiffs or any of said clerical employees herein referred to of their free and untrammeled right of self-organization.

Nothing in this injunction shall be considered or construed as authority to prevent any employee of said defendant Railroad Company, in the class referred to, from organizing, joining, promoting, or fostering as many unions as he or they (meaning such employees in the class referred to) may desire, and in any way which he or they may desire, and with the assistance and aid of any of his fellow employees in any way and to any extent that said fellow employees (in the class referred to) may desire; nor shall anything in this injunction be considered or construed as authority or permission for any officer or agent of said company, or any employee, acting for or on behalf of the defendant Railroad Company, attempting to influence or to interfere with said selection or designation of their said

representatives, or their right to self-organization as herein referred to, upon any pretext that they are acting individually and not as representatives of said defendant corporation."

In October, 1927, contempt proceedings were instituted by an information which charged sundry violations of the injunction by the Railroad Company acting through its authorized officials and agents. Evidence in support of the allegations of the information included evidence to the effect that after the injunction was issued the Railroad Company, acting through agents authorized by it, brought to bear upon clerks in its employ who were members of the Brotherhood or eligible to membership therein influence and pressure, including promises and threats, to induce such employees to renounce the Brotherhood as the representative of such clerks in dealings with their employer as to rates of pay, rules and working conditions, and to consent to the Association being the representative of such clerks in such dealings; permitted employees to devote their time and services to activities for the Association without deduction from their pay while they were so engaged, but docked the pay of employees who were members of the Brotherhood for time used in the service of the Brotherhood, deprived of passes employees who, while on leave of absence without pay, acted as officers of the Brotherhood, and dismissed from the service employees who acted for the Brotherhood, because they so acted; and formally recognized and dealt with the Association as the sole authorized representative of such clerks in dealings with the Railroad Company as to wages and working conditions. By an order made in that proceeding the court adjudged that the Railroad Company and named agents and employees of it were guilty of contempt, and imposed as conditions of the purging of the contempt adjudged the cancellation of the recognition by the Railroad Company of the Association as the authorized representative of such clerks, the restoration to their positions of named discharged employees who were members of the Brotherhood, and the restoration of the pass privileges of which named members of the Brotherhood had been deprived. After the introduction of evi-

dence by both parties the court rendered a decree perpetuating the above mentioned temporary injunction.

The following provision of section 2 of the Railway Labor Act, approved May 20th, 1926, 44th Stat. 577, being subdivision Third of that section, was invoked to support the asserted right to relief sought by the bill: "Representatives, for the purpose of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other." For the appellants it was contended that to give to the quoted provision the effect of conferring on employees of a carrier a judicially enforceable right would be inconsistent with the decision in the case of Pennsylvania, etc. Federation v. Pennsylvania Railroad Company, 267 U. S. 203. In that case a trade union of employees of a carrier sought to enforce by mandatory injunction compliance with regulations of the United States Labor Board providing for such employees acting, in dealings with the carrier as to wages, conditions of employment, etc., through representatives of their own choice. The court recognized that under the statute governing the Labor Board it had the right to prescribe such regulations, but decided that under that statute such regulations were not legally binding on the carrier or its employees, or judicially enforceable at the instance of the latter. That case and the instant one differ in that a question presented in the former was as to regulations of the Labor Board being judicially enforceable, while the latter presents the question whether a provision of an Act of Congress gives a right claimed, and, if so, whether a court can award redress for a violation of that right. By the quoted provision Congress conferred on employees of a carrier the right to select their representatives, for the purposes of the Act, by means of collective action, without interference, influence, or coercion exercised by the carrier over the self organization or designation of representatives by the employees, and imposed on the carrier the duty of refraining from exercising the forbidden interference, influence, or coercion. Though under the Railway Labor Act it is optional with carriers and their

employees to agree or not to agree to use the means provided for by the Act for the settlement of disputes, it is not optional with either to violate rights conferred on the other by the Act. The provision in question indicates the unwillingness of Congress to provide machinery for the settlement of disputes between carriers and their employees by the voluntary action of the parties without at the same time providing for the representative acting for each party in agreeing to a prescribed method of settlement being one chosen by that party without interference, influence or coercion exercised by the other party. The violation of a duty created by statute, resulting in damage to one of the class for whose benefit the duty was imposed confers a right of action upon the injured person, though the statute makes no provision as to a remedy for such a wrong. Marbury v. Madison, 1 Cranch, 137, 163; De Lima v. Bidwell, 182 U. S. 1, 176; 1 Corpus Juris, 951. The language of the provision in question is inconsistent with the existence of intention to leave a carrier free to interfere, in the way charged in the bill, with collective action by members of a group of its employees in selecting their representative for purposes of the Act.

The provision in question was attacked on the ground that it was beyond the power of Congress to enact it. We think that under the power to regulate interstate commerce it is competent for Congress to make provision for the settlement of disputes between interstate carriers and their employees with reference to rates of wages, rules and working conditions, to the end of preventing such disputes resulting in the interruption or stopping of the movement in interstate commerce of freight or passengers. Wilson v. New, 243 U. S. 364. Certainly a not inappropriate feature of such a provision would be one having a tendency to secure to each of the parties to such a dispute, when an attempt to effect a settlement of the dispute is to be made, the opportunity of selecting a representative not subject to the domination or under influence of the other party, as a settlement could not reasonably be expected to be satisfactory to both the parties and the public where one of the parties to the dispute was not loyally or fairly represented in the transaction which resulted in the settlement. To say

the least, we have not been convinced of the invalidity of the provision in question.

For the appellants it was contended that, though there was no adequate legal remedy for the redress of the wrongs charged by the bill, the issue of the injunction was forbidden by section 20 of the Clayton Act, 29 U. S. C. §52, which provides that not restraining order or injunction shall be granted by any United States Court or a judge thereof in any case between employers and employees, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application. It may be assumed that that provision governs applications for injunctive relief by both employers and employees, though there is some ground for concluding that in enacting the provision Congress had in mind applications for such relief by employers only. The term "property right" is broad enough to include the right to make contracts for the acquisition of property, by the rendition of services, or otherwise, and the right of an employee to money or other property exchanged, or to be exchanged, for his services. Coppage v. Kansas, 236 U. S. 1, 14. It hardly would be denied that injury to a property right of one would result from keeping him from realizing as much income from his occupation or business, though it consists in rendering personal services for compensation, as he could have earned if his freedom of acting and contracting had not been interfered with. We are of opinion that within the meaning of the provision now under consideration injury to property rights of members of a group of employees would result from conduct of their employer having the effect of such employees, in dealings between them and their employer with reference to terms and conditions of employment, having a representative subject to the domination or selfish influence of the employer, as a probable consequence of employees being so represented would be their failure to fare as well financially as they would have fared if they had been represented by a loyal agency intent on promoting their interests. The evidence adduced included a letter written by a vice president of the Railroad Company to its president about two months prior to the date of the filing of the bill, which showed that the planning to get

rid of the Brotherhood as the representative of the clerical employees in the pending dispute as to wages was because of the conviction or expectation that the Railroad Company by eliminating the Brotherhood from the situation would be enabled to effect a settlement of that dispute at a cost not to exceed $75,000.00 a year, while any settlement that could be expected to be brought about as a result of dealings with the Brotherhood would mean an increased clerical payroll of approximately $340,000.00 a year. In the circumstances attending the institution of the suit, one of those circumstances being a realization by the carrier that a settlement of the pending dispute as to wages could not be effected without some increase in the wages of its clerks, there was a substantial basis for the conclusion that members of the group of employees whose wages were in question had a property or financial interest in being afforded the opportunity of choosing a representative to act for them by collective action, without interference, influence or coercion exercised by the carrier. We conclude that the granting of an injunction in this case was not a violation of the statutory provision in question, and further that the allegations and proofs warranted the granting of injunctive relief.

The action of the court in the contempt proceedings in imposing conditions to the purging of the contempt found to have been committed did not go beyond requiring the undoing of what had been done in violation of the injunction. In dealing with the situation created by violations of the injunction it was permissible for the court to provide for the restoration of the status quo. Texas, etc. R. R. v. Northside Ry., 276 U. S. 475.

We conclude that the record does not show that reversible error was committed. The decree is affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

DISSENTING OPINION—Filed June 10, 1929

FOSTER, C. J., dissenting:

In the last analysis the case here presented is an attempt by one labor union to prevent the organization of another

labor union and to compel a railroad to negotiate with it as the sole representative of its clerical employees.

The organization of workers into unions and collective bargaining as to wages and working conditions has long been recognized by the courts as legal and by the public as desirable. The Railway Labor Act of 1926 is merely declaratory of public policy. It provides means for negotiation and arbitration but, unless arbitration is voluntarily entered into by mutual agreement, it contains no provision for compelling observance of its various sections.

However desirable it may be, in the interest of the public and the parties, that both a railroad and its employees proceed in good faith to settle their differences as to wages and working conditions in the manner pointed out by the act, either the railroad or its employees may refuse to be bound by the act and may decline to negotiate at all.

For a railroad to set up a company union, by persuasion or implied coercion, perhaps, and to then enter into an agreement with it, which may be considered merely an empty form, may be wrong and contrary to public opinion but to say that paragraph 3 of sec. 2 of the Railway Labor Act gives a right of action to prevent such a course of conduct is going beyond the letter and intent of the law.

In my opinion the case here presented comes clearly under the ruling in Pennsylvania Federation vs. Pennsylvania Railroad, 267 U. S. 203. I therefore respectfully dissent.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

NO. 5406

TEXAS & NEW ORLEANS RAILROAD COMPANY et al.

versus

BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS, etc., et al.

JUDGMENT—June 10, 1929

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Texas & New Orleans Railroad Company, and others, and the surety on its appeal bond herein, United States Fidelity & Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

Foster, Circuit Judge, dissenting.

Motion for rehearing, covering 15 pages, filed June 20, 1929, omitted from this print. It was denied and nothing more by order August 10, 1929.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—August 10, 1929

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION FOR ORDER STAYING MANDATE—Filed August 20, 1929

To the Honorable Judges of said court:

Come now Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid and John G. Torian, appellants in the above proceeding, and respectfully represent and show to the Court that it is their purpose to apply to the Supreme Court of the United States for writ of certiorari therein at as early a date as practicable and within the time limited

by law. They, therefore, pray the Court to enter an order staying the issuance of mandate in said cause for a reasonable time within which petition for said writ of certiorari may be prepared and filed.

Respectfully submitted.

(Signed) John Walter Palmer, Walker B. Spencer, Victor Leovy, J. H. Tallichet, Attorneys for Appellants.

Duly sworn to by J. H. Tallichet. Jurat omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE—Filed Aug. 20, 1929

On consideration of the Application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 20th day of August, 1929.

(Signed) Rufus E. Foster, United States Circuit Judge.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 9, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,600. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 469. Texas and New Orleans Railroad Company, H. M. Lull, G. S. Waid, et al., petitioners, vs. Brotherhood of Railway and Steamship Clerks et al. Petition for writ of certiorari and exhibit thereto. Filed October 30, 1929. File No. 34,600.